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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 460

L. W. LANE, PETITIONER,

vs.

JESS WILSON, JOHN MOSS AND MARION PARKS

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT**

PETITION FOR CERTIORARI FILED NOVEMBER 7, 1938.

CERTIORARI GRANTED DECEMBER 12, 1938.

UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE TENTH CIRCUIT:

NO. _____

I. W. LANE, APPELLANT,

vs.

JESS WILSON, JOHN MOSS, AND MARION PARKS,
APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA.

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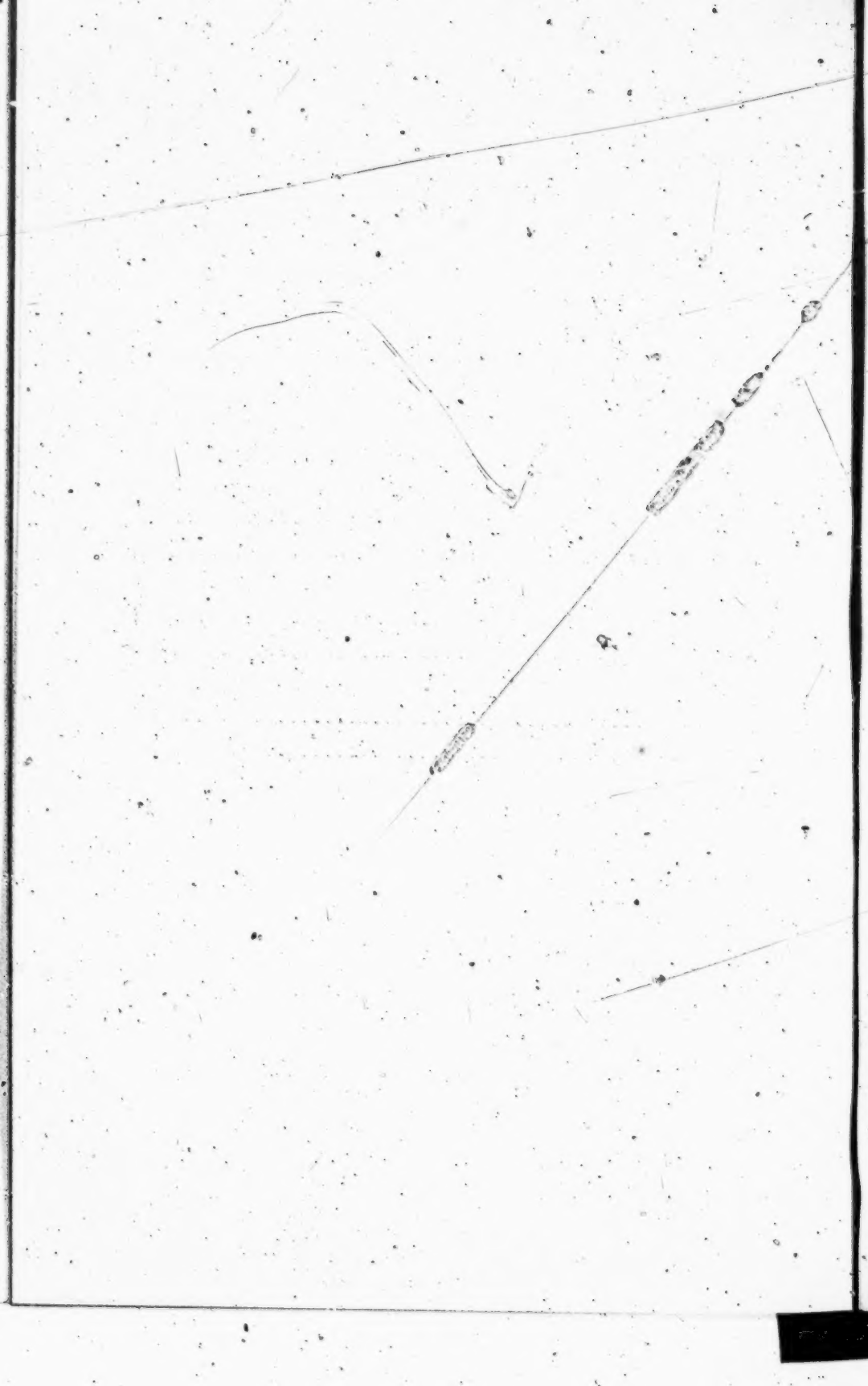
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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE ALFRED P.
MURRAH, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOL-
LOWING ENTITLED CAUSE:

I. W. LANE, PLAINTIFF,

No. 6353

vs.

Law

JESS WILSON, MARION PARKS, AND JOHN MOSS,
DEFENDANTS.

Petition.

For his cause of action against the defendants, Jess Wilson, Marion Parks and John Moss, and against each of them, plaintiff, I. W. Lane alleges and states:

1. That said plaintiff and each of the defendants are citizens and residents of Wagoner County, State of Oklahoma; that the amount involved herein, exclusive of interest and costs exceeds the amount and value of three thousand dollars; that this action involves a federal question, namely, the right of suffrage of plaintiff under the Constitution of the United States, the Fourteenth and Fifteenth Amendments thereto, and the laws of the United States enacted pursuant thereto.

2. That the plaintiff, I. W. Lane is a male Negro citizen of the United States, is approximately sixty six years of age, was born in Talladega County, State of Alabama; that plaintiff is a resident and citizen of the State of Oklahoma, having continuously and in good faith resided in the Town of Red Bird, in Wagoner County, in said State since about the 1st

day of January, A.D., 1908; that plaintiff now resides in, and continuously for more than one year next preceding the 24th day of October 1934, hereinafter mentioned, has resided in the Election precinct in Wagoner County, Oklahoma, legally designated "Gatesville Precinct No. 1".

3. That plaintiff, L. W. Lane, has never been adjudged guilty of a felony or any crime; that plaintiff is not now, was not on October 24th, 1934, nor has he ever been confined in any poor house or any asylum at public expense or otherwise; that plaintiff is not now, nor was he ever confined in any public prison; that plaintiff is not a lunatic nor an idiot. Plaintiff further alleges that by reason of the allegations herein above made, he was in all particulars on the 24th day of October, 1934, a duly qualified elector of said State of Oklahoma, according to the laws of said State, and as such was entitled to be registered as such elector.

4. Plaintiff further alleges that on the 24th day of October, 1934, the defendant, Jess Wilson, was the duly appointed, qualified and acting County Registrar of Wagoner County, State of Oklahoma; and on said day the defendant, Marion Parks, was the duly appointed, qualified and acting Precinct Registrar of the aforementioned precinct in Wagoner County, Oklahoma, designated as "Gatesville Precinct No 1", in which precinct at said time, this plaintiff was residing and in which precinct plaintiff had resided for more than thirty days next preceding said 24th day of October, 1934. That the defendant, John Moss, on the 24th day of October, 1934, was the duly elected, qualified and acting County Judge of Wagoner County, State of Oklahoma.

5. That under the laws of the State of Oklahoma, (Section 5652, Okla. Stat. 1931), registration is a prerequisite to the right of the citizens of said State to vote in any election held in said State, and unless and until said plaintiff is registered, as provided by the said laws of Oklahoma, the said plaintiff will not be entitled to vote at any election held in the State of Oklahoma, and in said County and Precinct.

6. That on November the 6th, 1934, there is to be held in the State of Oklahoma, and in Wagoner County, according to the laws applicable thereto, a general election, at which election, Representatives to the Congress of the United States and State and County officers are to be voted upon, and unless

said plaintiff is afforded a reasonable opportunity to be registered and is registered pursuant to the aforementioned laws of Oklahoma, he will be denied the fundamental and constitutional right to vote at said general election in his above named precinct.

7. That such a denial of the right of said plaintiff to vote at said election for said Representatives to the Congress and for said State and County officers, will constitute to plaintiff a denial of the right of suffrage as a citizen of said County and State and of the United States, and will constitute to plaintiff a denial of the equal protection of the laws, contrary to the Constitution and laws of the State of Oklahoma, and contrary to the Constitution of the United States, the Fourteenth and Fifteenth Amendments thereto and to the laws of the United States enacted pursuant thereto.

8. Further, plaintiff states that in 1916 there was enacted by the Legislature of the State of Oklahoma, a registration law providing for the registration of qualified electors to vote in the various elections of said State and counties. It was provided in said registration law that the only qualification of an elector was that such elector must have been a citizen of the United States and of the State of Oklahoma for more than one year, and a resident of the County for more than six months and in the precinct for more than thirty days prior to April 30, 1916, or prior to any subsequent registration period (Sec. 5654 Okla. Stat. 1931).

9. It was further provided in said registration law (sec. 5654 Okla. Stat. 2931) that: "It shall be the duty of the precinct registrars to register each qualified elector of his election precinct who makes application between the 30th day of April 1916, and the 11th day of May 1916," * * * "and provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this State on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and to deliver such certificate to such elector if he is still a qualified elector in such precinct, and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state; etc." It was further provided in

said section, "That each County election board in this State shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive of the right of such person to vote".

10. Further, plaintiff states that during the first registration period, between April 30, 1916, and May 11, 1916, said plaintiff was a resident of said State, county, and precinct for a long time prior thereto, as set forth above; that during said registration period, this plaintiff made application at the time and in the manner required by law to the precinct registrar of said precinct mentioned herein, for registration under the registration law of Oklahoma, and that the then precinct registrar in said precinct refused to register plaintiff, solely on account of his race, color and previous condition of servitude. The said plaintiff made application to the respective registrars of said precinct at each and all of the subsequent registration periods, and was refused registration at each and all of said registration periods solely on account of his race, color and previous condition of servitude.

11. That the respective registrars in said County and precincts, during the registration period in May, 1916, and of all subsequent registration periods respectively, informed said plaintiff, that they had no authority or instructions to register any Negroes; and the registrars of said precincts during each and all of said registration periods refused to register any Negroes, including this plaintiff, solely on account of their race, color and previous condition of servitude.

12. Further, plaintiff states that ever since the passage of said registration law aforesaid, and ever since the same became effective, the county and precinct registrars and the county election board of said Wagoner County have unlawfully combined, confederated and conspired together, and have formulated and devised various schemes and plots whereby they have prevented and still prevent the Negro residents of said Wagoner County, including particularly this plaintiff, from being registered in their respective precincts. That said conspiracy was set in motion and operation during the registration period between April 30, 1916, and May 11, 1916, and has continued to operate during each and all of the registration periods thereafter and still continues to operate,

and plaintiff further states that as a result of said conspiracy, it has become the general, habitual and systematic practice of said county registrars, including this defendant, Jess Wilson, and his predecessors in office, to refuse to register Negro residents of said Wagoner county, including the plaintiff, I. W. Lane, and to deprive them of their right of suffrage solely on account of their race, color and previous condition of servitude.

13. Further, that in furtherance of the conspiracy and to further promote the schemes and plots aforesaid, the said county registrars, the county election board and the precinct registrars of said Wagoner County and of said precincts, have secretly and connivingly entered in to a pact and agreement among themselves whereby they have agreed not to register any Negro elector in said County and in said precincts, and the said county registrars, including the defendant, Jess Wilson and their predecessors in office, have given specific instructions to said precinct registrars, including the defendant, Marion Parks, not to register any Negroes in their said precincts, and plaintiff further states that by reason of said unlawful agreement and by reason of the instructions of said county registrars, including the defendant, Jess Wilson, the precinct registrars, including the defendant, Marion Parks, have persistently refused, and still refuse to register the Negro electors in said precincts, including the precinct in which plaintiff resides.

14. That as part and parcel of the conspiracy aforesaid, and in furtherance thereof, the said county registrars and precinct registrars have invented, devised and set in motion and operation various schemes, tricks and artifices and have used every subterfuge to prevent the registration of Negroes and to deprive them of their fundamental and constitutional right of suffrage, to wit, said county election officials would intentionally fail and refuse to appoint proper registrars in said precincts at the proper time, and would fail to furnish them with sufficient blanks and registration books; said officials would wilfully and intentionally mislead and misinform the Negroes as to the proper identity of their respective precinct registrars; said precinct registrars would intentionally absent themselves from their homes and offices where the registration books are kept and would conceal themselves from the Negro residents; that some member of the registrar's

family would inform the Negro applicants that the registrar was not at home, or was busy; that if said Negro electors would accidentally meet said registrars, they would inform them that they had run out of blanks, or that they did not have the registration books, or that the registrar was some one else; or that the Negro electors had to get a Court order before they could be registered. That when no other excuse was available, said registrars would inform the Negro electors that they had instructions from superior officials not to register Negroes and said precinct registrars would thereupon refuse to register said Negro electors. That some of said precinct registrars have threatened violence and serious bodily harm upon Negroes who duly made application for registration.

15. That pursuant to the laws of the State of Oklahoma, the registration period for the aforementioned election of November 6, 1934, began on October 17, 1934, and closes on the 26th day of October, 1934. That on the 24th day of October, 1934, this plaintiff, I. W. Lane, being then a duly qualified elector of said precinct, county and state aforesaid, duly presented himself to the defendant, Marion Parks, precinct registrar aforesaid, and at said time, this said plaintiff made application to said defendant, Marion Parks, for registration and for a registration certificate, which said registration and registration certificate said Marion Parks refused said plaintiff solely on account of the race, color and previous condition of servitude of plaintiff; and at said time said Marion Parks, precinct registrar aforesaid, advised this plaintiff that he had been forbidden by said John Moss, County Judge of Wagoner County, Oklahoma, and by Jess Wilson, County Registrar of Wagoner County, Oklahoma, to register any Negroes.

16. Further, that in refusing to register this plaintiff, as set forth above, and in making it impossible for plaintiff to register and to vote in the aforementioned election, said defendants were acting pursuant to the aforementioned conspiracy; said defendants, and each of them, were and are violating the rights of plaintiff, under the Constitution of Oklahoma, and under the Constitution of the United States, the 14th and 15th amendments thereto, and the laws of the United States enacted pursuant thereto.

17. Further, the illegal acts of the defendants Jess Wilson, John Moss and Marion Parks hereinabove alleged, con-

stitute a violation of Section 31, Chapter 2 of Title 8 of United States Code (R. S. Sec. 2004). That in the violation of the rights of said plaintiff, said defendants, and each of them, were acting under color of certain statutes of the State of Oklahoma hereinafter mentioned, and under color of custom and usage in said County of Wagoner and State of Oklahoma, and caused said plaintiff to be deprived of rights, privileges, and immunities secured by the Constitution and laws of the United States.

18. Further, that in the illegal acts hereinabove complained of, said defendants and each of them were acting under the color of Chapter 29 of the Oklahoma Statutes of 1931, and especially under color of Article 3 of said chapter, and under color of Section 5654 of said Article 3, Chapter 29 of said laws of Oklahoma, 1931, and Section 5657 of said Article and Chapter. That said Section 5654, Article 3, Chapter 29, (C. O. S. 1921, Sec. 6252) provides as follows:

“Registration—general regulations. It shall be the duty of the precinct registrar to register each qualified elector of his election precinct who makes application between the 30th day of April, 1916, and the 11th day of May, 1916, and such person applying shall at the time he applies to register to be a qualified elector in such precinct and he shall comply with the provisions of this act, and it shall be the duty of every qualified elector to register within such time; provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering within the precinct registrar within such time, he may register with such precinct registrar at any time after the tenth day of May, 1916, up to and including the thirtieth day of June, 1916, but the precinct shall register no persons under this provision unless he be satisfied that such person was absent from the County or was prevented from registering by sickness or unavoidable misfortune, as hereinbefore provided. And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this State on the 1st Tuesday after the first Monday in November, 1914, without the applica-

tion of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this State; and provided further, that whenever any elector is refused registration by any registration officer such action may be reviewed by the District Court of the County by the aggrieved elector by his filing within ten days a petition with the Clerk of said Court, whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the District Court shall be (give) a (an) expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; and provided further, that the provision of this Act shall not apply to any school district elections. Provided further, that each County election Board in this State shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote.”

and Section 5657 Oklahoma Statutes, 1931, (C. O. S., 1921 Section 6255), provides as follows:

“Electors—oath and requirements—exceptions—registrars’ books and records. Each qualified elector in this State may be required to make oath that he is a qualified elector in such precinct, and shall answer under oath any questions touching his qualifications as an elector and give under oath the information required to be contained in a registration certificate. Except in the case of a qualified elector who voted at the general election held in this State on the first Tuesday after the first Monday in November, 1914, in which case it shall be mandatory duty of the precinct registrar to register such voter and deliver to such voter a registration certificate and the failure to so register such elector and to issue such certificate shall not preclude or prevent such elector from voting at any election in this state. If any person shall fail or refuse to give the information required in a registration certificate, or fail or refuse to answer any questions pro-

pounded to him by said registrar touching his qualifications as an elector, such person shall not be registered and no certificate of registration shall be issued to him. If said registrar shall be satisfied that any person who makes application to register is a qualified elector in the precinct at such time, and if such person complies with all the provisions of this Act, then said registrar shall detach the original registration certificate, properly filled in and containing the information required in this Act, and deliver to such person such original registration certificate. Etc."

19. Further, plaintiff alleges, upon information and belief, that the above mentioned Section 5654, Okla. Stat. 1931, (C. O. S., 1921, Sec. 6252,) and Sec. 5657, Okla. Stat. 1931, (C. O. S., 1921, Sec. 6255) are mere subterfuges aimed exclusively and directly at and against Negro citizens of the United States residing in the State of Oklahoma, and further that said laws are and were designed for the exclusive purpose of depriving said Negro citizens of the right of suffrage, and in violation of Section 6, Article 1 of the Constitution of Oklahoma and also in violation of the 15th Amendment of the Constitution of the United States, and in violation of the laws of the United States enacted pursuant thereto. Said Statutes and laws are further an illegal and cunning attempt to achieve the illegal purpose sought by "(The Amendment) Section 4a, Grandfather Clause of Article iii of the Constitution of Oklahoma, and to evade the effect of the decision of the Supreme Court of the United States, "(Guinn vs. United States," decided June 21st, 1915, 238 U. S. 347, 59 L. Ed. 1340.) That said State Statutes designated for the purpose aforesaid were enacted on February 26, 1916, immediately after the above mentioned decision of the Supreme Court of the United States; and said laws provide for an unjust, unreasonable and illegal classification of the electors of the United States and of the State of Oklahoma; they give to precinct registrars therein provided for an arbitrary and capricious discretion to deny or refuse qualified Negro electors the right of suffrage; and said State laws deny and abridge the right of Negro citizens, including this plaintiff, to vote, solely on account of race, color and previous condition of servitude. That precinct registrars of Oklahoma in general in denying the right to register and the right of suffrage throughout said

State of Oklahoma, and the defendants hereinabove named in denying and refusing to permit this plaintiff to register or to vote, as hereinabove specified, were and are carrying out the patent and expressed intent and design of said State laws.

20. That in the conspiracy concocted by said defendants hereinabove mentioned, and the illegal acts of them perpetrated against the plaintiff, as set forth above, said defendants violated Section 43 of Chapter 3, Title 8, U. S. Code (R. S. Section 1979). That said defendants by their said illegal and wrongful acts have damaged this plaintiff in the sum of and to the extent of Five Thousand Dollars, (\$5000.00). That said defendants with an illegal intent, wilfully, and maliciously violated the aforementioned rights of this plaintiff, and because thereof, plaintiff is entitled to a judgment against the said defendants and against each of them, in the sum of Five Thousand Dollars (\$5000.00) as punitive damages.

Wherefore, plaintiff prays for judgment against said defendants Jess Wilson, Marion Parks, and John Moss in the sum of Five Thousand Dollars (\$5000.00), jointly and severally, as actual damages, and for judgment against them and each of them in the further sum of Five Thousand Dollars (\$5000.00) as punitive damages, and for the costs of this action.

And said plaintiff further prays for such other and further relief as he may be entitled to.

Dated this 26 day of October, 1934.

I. W. LANE,

Plaintiff.

CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Plaintiff.

Verification.

State of Oklahoma,
County of Wagoner—ss.

I. W. Lane of lawful age, after having been first sworn according to law, deposes and says that he is the plaintiff named in the above and foregoing petition; that he has read the same and is familiar with the contents thereof, and that

the matters, allegations and things therein stated are true and correct, except as to those statements made upon information and belief, and as to those statements he believes them to be true.

I. W. LANE,
Plaintiff.

Subscribed and sworn to before me this 26 day of October, 1934. N. J. Edwards, Notary Public. (Seal) My commission expires Oct. 28, 1934.

Filed Oct. 27, 1934. W. V. McClure, Clerk.

(Caption omitted.)

Separate Answer of Defendants, Jess Wilson and
Marion Parks.

Come now the defendants, Jess Wilson and Marion Parks, and for their answer to the plaintiff's petition deny each, every and all the material allegations therein; except, however, such as are specifically admitted.

They admit that the defendant, Jess Wilson, was the County Registrar, and defendant, Marion Parks, was the Precinct Registrar, of Gatesville Precinct No. 1, Wagoner County, Oklahoma, and defendant, John S. Moss, was the duly qualified and elected County Judge of Wagoner County, Oklahoma, at the time complained of in plaintiff's petition.

They deny that the amount involved exclusive of interest and costs, exceed the amount and value of the sum of \$3,000.00; that this action involves a Federal question, the right of suffrage under the Constitution of the United States, 14th and 15th Amendment and the laws of the United States pursuant thereto; that the plaintiff is a resident of Redbird, Wagoner County, Oklahoma, and has been such resident since about the 1st of January, 1908; that plaintiff resides and has continuously resided for more than one year next preceding the 24th day of October, 1934, in the aforesaid election precinct, and deny that the plaintiff has never been adjudged guilty of any felony or crime; that he was on the 24th day of October, 1934, a qualified elector of the State of Oklahoma, according to its laws, and was entitled to registration under its laws of said State.

They deny that under the laws of the State of Oklahoma, registration in every instance is a pre-requisite to the right of citizens of the State to vote in any of all the elections held therein and unless registered, he will not be entitled to vote at any elections held in the State, County and Precinct. They admit that on the 6th day of November, 1934, a general election was held at which Representatives, Congressmen, State and County officers were elected, but they deny that plaintiff was denied any fundamental and constitutional right under the general election laws; they further deny that by reason of any of the acts complained of, the plaintiff was not afforded the equal protection of the law and that the law or Constitution of the State of Oklahoma, or of the United States, was in any way abridged or offended by reason of their acts or conduct. They admit that in 1916, a universal registration law was passed and approved by proper constituted authorities, same being Chapter 24, Session Laws of 1918, State of Oklahoma, and that Section 5654, Oklahoma Statutes 1931, as substantially copied in plaintiff's petition, is true and correct. They deny that during the first registration period under the said universal registration law, and during subsequent registration periods, plaintiff made application as provided by law, to the proper precinct registrar of his precinct for registration; and they further deny that the precinct registrar of said precinct at the time mentioned, refused to register plaintiff solely on account of his race, color and previous condition of servitude; that plaintiff made application to the registrar of his precinct at the recent precinct registration period and was refused registration solely for the reason last above mentioned. They deny that the respective precinct registrar of Gatesville Precinct No. 1, during the registration period in May, 1916, and subsequent registration periods, informed the plaintiff that they had no authority or instructions to register negroes, giving as their reason that he was a negro and refused to register him by reason thereof. They further deny that ever since the passage of the aforesaid registration law, the county and precinct registrars and county election board of Wagoner County have unlawfully combined, confederated and conspired together and devised various schemes and plots preventing negroes in Wagoner County, including plaintiff, from being registered in their respective precincts, and deny such condition ever existed or set in motion between April

30th, 1916, and May 11, 1916, or at any other period, and that such has existed during each and all of the registration periods thereafter and that such continues operative. They deny it has been a general habit and custom of the county registrars, including the defendant, Wilson, to refuse to register negroes of said county and to deprive them of their right of suffrage, solely on account of their race, color and previous condition of servitude. They further deny that in furtherance of any conspiracy, the county registrars and county election board and precinct registrars of Wagoner County, have secretly and connively entered into any agreement whereby they would not register negroes and that the aforesaid alleged conspirators, including the defendants herein, have given specific instructions to precinct registrars, including the defendant Parks, not to register negroes in the respective precincts of Wagoner County. They deny they have refused and still refuse to register negro electors in their respective precinct; that schemes, tricks, etc., have been used to prevent negroes from registering and to deprive them of their rights of suffrage; that the county election officials have failed and refused to furnish blanks, books, etc., incident to the duties of said registrars, nor have the officials misled and misinformed the negroes as to the precinct in which they should be registered; nor have they absented themselves from home and office where the registration books are kept nor have they concealed themselves from negroes desiring to register, nor is it true that members of the registrar's family would inform negroes that the registrars were not at home or busy, or they had run out of blanks, did not have registration books; that the registrars were somewhere else; that the negro electors had to get a court order; that they had no instructions from superior officials and that by reason thereof, refused to register negro electors; informed them and threatened bodily harm to negroes seeking registration. They deny that on the 24th day of October, 1934, or at any other time, the defendant Parks refused to register plaintiff solely on account of his race, color and previous condition of servitude, nor did the said Parks advise the plaintiff that he had been forbidden by the defendant, John Moss, County Judge of Wagoner County, and Jess Wilson, County Registrar, of said County, to register negroes. They further deny that by reason of their act or conduct or that of either of them, as complained of,

they were acting pursuant to any conspiracy between them or any other persons and by reason of their acts and conduct, they violated any of plaintiff's rights, particularly the 14th and 15th Amendment of the Constitution of the United States and laws of the United States pursuant thereto.

Defendants admit the Statutes mentioned and quoted in plaintiff's petition partly cover the duties of election officials, including the duties of County and Precinct Registrars, but deny that under any custom and habit, such officials in Wagoner County, deprived the plaintiff of any constitutional rights, but that they, in all respects, endeavor to do their duty as County and Precinct Registrars in accordance with the laws in such cases made and provided, and in accordance with their best understanding and knowledge thereof; that in the event the Statutes of the State of Oklahoma, mentioned by plaintiff, were void and not in force and effect, such was not known to them, but in this connection they deny that the Statutes mentioned by plaintiff are illegal and void and they further allege that the election laws of Oklahoma are fair and just, without discrimination, and applies to all alike regardless of race, color or previous condition of servitude, and therefore, deny that said election laws complained of by plaintiff are mere subterfuges aimed exclusively and directly at negro citizens, residing in the State of Oklahoma, and deny that they were designed and intended for the exclusive purpose of depriving negro citizens of the right of suffrage, and such are in violation of the Constitution of the State of Oklahoma and the Constitution of the United States, and the laws enacted pursuant thereto, and they deny that said laws were passed and approved in order to evade the judgment of the court in the case of Guinn vs. United States, and they deny that the election laws of Oklahoma are unjust and *unjust and* illegal classification of electors of the State of Oklahoma; that it is not true that such laws give the precinct registrars an arbitrary and capricious discretion to deny or refuse qualified electors of the right of suffrage, and that said election laws abridge the right of negro citizens, including plaintiff, to vote, solely on account of race, color and previous condition of servitude.

Defendants for further answer state that if it be true that plaintiff has been denied registration, as claimed, that

he, at all times, had the right to appeal to the District Court of Wagoner County, to have reviewed the action of the Precinct Registrars of which he complains, by filing a petition with the Court Clerk, within ten days from such refusal, and wherein an expeditious hearing might have been had; likewise, than an appeal would lie from the District Court to the Supreme Court of the State of Oklahoma, in the event the plaintiff was illegally denied his right of suffrage. Therefore, is all things and matters, of which the plaintiff complains, are true, he has waived his statutory right as herein mentioned, and should not now be heard to complain and for such reason should be denied relief herein.

Defendants further allege that the registration period complained of in plaintiff's petition, was a period of special registration of newly qualified electors, at which time plaintiff was not entitled to be registered, even though he possessed the necessary qualifications, that is to say, that by and under Section 9 of the Universal Registration Laws herein mentioned, it is provided:

"Any person who may become a qualified elector in any precinct in this State after the tenth day of May, 1916, or after the closing of any other registration period, may register as an elector by making application to the registrar of the precinct in which he is a qualified voter, not more than twenty nor less than ten days before the day of holding any election and upon complying with all the terms and provisions of this Act, and it shall be the duty of precinct registrars to register such qualified electors in their precinct under the terms and provisions of this Act, beginning twenty days before the date of holding any election and continuing for a period of ten days. Precinct registrars shall have no authority to register electors at any other time except as provided in this Act and no registration certificate issued by any precinct registrar at any other time, except as herein provided shall be valid. After the close of registration ten days before any election as herein provided, and after the close of the registration of electors on June 30, 1916, or after the close of any other supplemental registration, the precinct registrar shall, immediately after the closing of such registration, enter upon the precinct register the

names of all persons registered during such period hereinbefore provided, and shall deliver to the Secretary of the county election board the duplicate registration certificates so issued in the same manner as hereinbefore provided, and the secretary of the county election board shall receive such certificates, receipt for the same, and add the names of such electors in the county registration book in the same manner as hereinbefore provided."

Defendants allege that plaintiff should not be permitted to prosecute his action for the further reason that the *gravamen* of plaintiff's petition is: that these defendants agreed and conspired to prevent his registration under the laws of Oklahoma, and then challenges the registration law as being unconstitutional and violative of the 15th Amendment of the Constitution of the United States and the laws of the United States enacted pursuant thereto. In other words; plaintiff asks the Court to punish these defendants in damages for their refusal to register him as an elector, under the Universal Registration Laws of the State of Oklahoma, which they plead is unconstitutional and without force and effect.

And defendants further deny that the plaintiff has been damaged in the sum of \$5,000.00 or any other sum by reason of any act of these defendants.

Wherefore, premises considered, they pray that the petition of the plaintiff be dismissed, and that they have judgment for their costs.

CHAS. G. WATTS,
Attorney for Defendants Jess Wilson
and Marion Parks.

State of Oklahoma,
County of Wagoner, ss.

Jess Wilson and Marion Parks, being duly sworn, on oath state: that each of them are one of the defendants mentioned in the above entitled cause of action; that they have read the foregoing answer and know the contents thereof and the statements set forth therein are true and correct as they verily believe.

.....
.....

Subscribed and sworn to before me this the day of
January, 1935. My commission
expires

Filed Jan. 12, 1935. W. V. McClure, Clerk.

(Caption omitted.)

Separate Answer of Defendant John Moss.

Comes now the defendant, John Moss, and for his separate answer to that part of plaintiffs petition which seeks to complain of this defendant and that only, denies each and every allegation in the petition which seeks to complain of this defendant except such as are hereinafter admitted.

1. This defendant admits that the defendant Jess Wilson was the County Registrar of Wagoner County, State of Oklahoma, on the 24th day of October, 1934; That Marion Parks was, on said date, the Precinct Registrar of Gatesville Precinct No. 1 in said Wagoner County, State of Oklahoma; That this defendant, John Moss, was the duly elected, qualified and acting County Judge of said Wagoner County; That the plaintiff I. W. Lane, was a resident of Gatesville Precinct No. 1 in said County and State.

2. This defendant admits that pursuant to the Laws of the State of Oklahoma, the Registration period for the general election to be held on November 6, 1934, began on October 17, 1934, and closed on the 26th day of October, 1934;

3. Further answering the allegations in paragraph fifteen of plaintiffs petition: "That on the 24th day of October, 1934, this plaintiff, I. W. Lane, being then a duly qualified elector of said precinct, County and State aforesaid, duly presented himself to the defendant, Marion Parks, Precinct Registrar aforesaid, and at said time, this said plaintiff made application to said defendant, Marion Parks, for registration and for a registration certificate, which said registration and registration certificate said Marion Parks refused said plaintiff solely on account of the race, color and previous condition of servitude of plaintiff; and at said time said Marion Parks, Precinct Registrar aforesaid, advised this plaintiff that he had been forbidden by said John Moss, County Judge of Wagoner County, Oklahoma, and by Jess Wilson, County Registrar of Wagoner County, Oklahoma, to register any ne-

groes.", this defendant has no knowledge but believes said quoted allegations to be not true, and therefore, denies same.

4. Further answering the aforesaid allegations, this defendant denies that he, at any time, did or said anything to the Precinct Registrar, Marion Parks calculated or intended to prohibit or hinder the registration or the issuing of registration certificates by said Precinct Registrar to negroes, including plaintiff I. W. Lane, and this defendant denies that he has, at any time, entered into a conspiracy or pact with County or Precinct Registrars for the purpose of hindering the registration of negroes of Wagoner County.

5. This defendant further denies that plaintiff has been damaged in the sum of five thousand (\$5000) dollars, or any other sum, by reason of the acts of this defendant.

6. Having thus made full answer to all the matters and things contained in plaintiff's petition, seeking to complain of this defendant, this defendant prays that the petition of plaintiff be dismissed as to this defendant and that he have judgment for his costs in this behalf incurred.

JOHN MOSS,
Defendant.

Filed Jan. 12, 1935. W. V. McClure, Clerk.

(Caption omitted.)

Reply of Plaintiff to the Joint Answer of Defendants, Jess Wilson and Marion Parks.

1. I. W. Lane, the above named plaintiff, shows to the Court that the joint answer of the defendants, Jess Wilson and Marion Parks, was and is filed irregularly and out of time, and not within the time ordered by the Court, and for said reason, said purported answer should be stricken from the files of this Court, and judgment should be rendered in favor of this plaintiff and against the defendants, Jess Wilson and Marion Parks.

2. For his reply to said joint answer of said defendants, the plaintiff denies each and every material allegation of said joint answer, except such as reallege or admit the allegations of plaintiff's petition.

3. And said plaintiff realleges that this action involves

an amount, exclusive of interest and costs, in excess of \$3,000.00; and further realleges that this action involves a Federal question; plaintiff realleges that he is and has been a citizen and resident of Wagoner County, Oklahoma, as alleged in his petition. And plaintiff further realleges that he is and was, as stated in his petition a qualified elector of the State of Oklahoma, and entitled to be registered, particularly as stated in his said petition.

4. Plaintiff realleges that he was denied by the defendants, fundamental and constitutional rights during the registration period next preceding the general election of November 6, 1934.

5. Plaintiff realleges that during the first registration period after 1916, and at each subsequent registration period as stated in plaintiff's petition, plaintiff made application for registration; and plaintiff realleges that the defendants and their predecessors conspired to and did deprive plaintiff of his right in the premises.

6. And plaintiff realleges that the registration laws mentioned in his said petition are unconstitutional, violative of the Constitution of the State of Oklahoma and of the United States, and are void, unjust and discriminatory and that said laws are mere subterfuges aimed exclusively and directly at Negro citizens of the United States and of the State of Oklahoma, and against this plaintiff.

7. Further, that the acts of said defendants under color of said election laws are illegal and wrongful.

8. And further specifically replying to the second paragraph of page six of said answer of said defendants, plaintiff admits that the above mentioned registration laws provide for an appeal to the District Court of Wagoner County, to have reviewed the action of which he complains, and by said law it appears that an appeal would lie from the District Court of said County to the Supreme Court of Oklahoma. And further replying to said paragraph, plaintiff alleges and shows that the pretended remedy of appeal provided for by said illegal registration laws are a phase of the sham and subterfuge to give said illegal laws the color and appearance of due process of law and of constitutionality. That under said laws and pretended remedies, it is and has been practically impossible for this plaintiff to obtain any relief be-

cause the time provided is so short that even upon the most expeditious hearing, the particular election would be over before plaintiff could obtain any effectual relief, and the question of plaintiff's rights would become moot.

9. Plaintiff further alleges that in Wagoner County, Oklahoma, where said defendants have held proceedings involving the rights of franchise of Negro citizens of the United States, such proceedings have been attended by such gross and rank irregularities as to give same the appearance more of a farce than of a judicial proceeding; that in such proceedings had in Wagoner County, during the month of November, 1934, involving the rights of Negro citizens under said registration laws, the defendant, Jess Wilson, acting as County registrar, and the defendant, John Moss, acting as co-conspirator to said Jess Wilson in said matter, denied to Negroes, parties to said proceedings, the right to cross-examine purported witnesses produced by said defendants, and denied to said Negro citizens the right either to appear or to be heard by counsel, or to produce witnesses on their behalf.

10. Further, this plaintiff denies that he has waived any of his constitutional rights under said registration laws, if ever under said laws he had any rights; and denies that he should be deprived of the right to be heard in this Court.

11. Further, specifically replying to the allegations set forth in the first and second paragraphs of said defendants' answer, this plaintiff shows that the purported classification of electors mentioned in said paragraph of said defendants' answer is violative of the Constitutions of the State of Oklahoma and of the United States, and also violative of the 14th and 15th Amendments to the latter Constitution; and that said purported classification is illegal, unconstitutional and void, and one of the means calculated by said registration laws to deprive Negro citizens in general, and this plaintiff in particular of their rights and his constitutional rights.

13. And specifically replying to the last paragraph of page 7 of said answer, plaintiff alleges that said paragraph commencing with the words "Defendant alleges etc.", and ending with the words "Which they plead is unconstitutional and without force and effect", is redundant and argumentative, and should be stricken from said answer, and further that the alleged unconstitutional registration laws mentioned

in plaintiff's petition, and the acts of the defendants pursuant to the conspiracy therein complained of, are part and parcel of the same illegal scheme to deprive Negro citizens in general, and this plaintiff in particular, of their right and his rights under the Constitution and laws of the United States.

Wherefore, having fully replied to said answer of said defendants, this replying plaintiff renews, by reference thereto, the prayer which he makes in his said petition. Dated, January 22nd, 1935.

I. W. LANE,

Plaintiff.

By CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Plaintiff.

Filed Jan. 22, 1935. W. V. McClure, Clerk.

(Caption omitted.)

Reply of Plaintiff to Separate Answer of Defendant,
John Moss.

1. I. W. Lane, the above named plaintiff, shows to the Court that the separate answer of the defendant, John Moss, was and is filed irregularly, out of time, and not within the time ordered by the Court, and for said reason said purported answer should be stricken from the files of this Court, and judgment should be rendered in favor of this plaintiff and against the defendant, John Moss.

2. Further, for his reply to the separate answer of said defendant, John Moss, the plaintiff denies each and every and all and singular the material allegations of said separate answer, except such as reallege or admit the allegations of plaintiff's petition.

3. Further, specifically replying to paragraph #3, page 2, of the answer of said defendant, John Moss, plaintiff realleges the averments of his petition quoted by said defendant in said paragraph #3, page 2; further, plaintiff denies that the defendant, John Moss, has no knowledge of said allegations, and denies that said defendant believes said allegations to be not true. And in this connection plaintiff alleges

that said defendant, John Moss, has, and at the time mentioned in said petition of plaintiff, had full knowledge of the facts and things stated in said quoted part of plaintiff's petition.

4. Further, specifically replying to paragraph #4, page 3 of the answer of said defendant, plaintiff realleges that the defendant, John Moss, was a party to the conspiracy mentioned in plaintiff's petition, and was an active participant in, and movant of the acts and conduct of his co-defendants, Jess Wilson and Marion Parks, calculated and intended to prohibit and hinder the registration of Negro citizens, including particularly this plaintiff.

Wherefore, having fully replied, said plaintiff repeats and renews, by reference thereto, the prayer which he makes in his said petition.

Dated this 22nd day of January, 1935.

I. W. LANE,

Plaintiff.

By CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Plaintiff.

Filed Jan. 22, 1935. W. V. McClure, Clerk.

(Caption omitted.)

Verdict.

We, the jury in the above-entitled cause, duly empaneled and sworn, upon our oaths, find the issues in favor of the defendants and against the plaintiff.

J. J. Ammons,

Foreman.

Filed in open court Apr. 20, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Motion for New Trial.

The above-named plaintiff, I. W. Lane, respectfully prays this Honorable Court to vacate and set-aside the order of said court, made on the 20th day of April, 1937, whereby the trial of said cause was taken from the jury and a verdict ad-

verse to plaintiff was ordered and directed by the court; to set-aside said adverse verdict and the order of the court thereon, and to grant said plaintiff a new trial herein, Plaintiff alleges and shows the following grounds and reasons in the premises, to wit:

1. During the trial of said cause the Honorable Trial Judge committed errors of law, prejudicial to the rights of said plaintiff, to which plaintiff did then and there object and except.

2. During the trial of said cause it was established, and not controverted, that in Wagoner County, Oklahoma, where of a total population of 22,428 inhabitants 6753 were Negroes (U. S. Official Census, 1930), during the 20 years next preceeding trial of this cause the officials of the State of Oklahoma, administering the 1916 Registration Laws of said State (O. S. 1931, Sec. 5654), permitted only TWO Negro citizens of the United States to register and qualify as electors, although many Negro citizens of the United States, including plaintiff Lane, residing in said County were duly qualified otherwise. This clearly established an abridgment and denial of the right to vote, on account of race and color; and also a violation of the 15th Article on Amendment to the Constitution of the United States. And the trial court erred in holding and instructing the jury that said Registration laws were valid and not unconstitutional, to which plaintiff objected and excepted.

3. It appearing from the face of the Oklahoma Registration laws of 1936 (O. S. 1931, Sec. 5654) that said law is an attempted revitalization of the illegal grandfather clause, Art. III, Sec. 4a, Oklahoma Constitution, Sec. 13450, O. S. 1931; or the same invalid law in a new disguise of words, and having the same discriminatory and unconstitutional intent, operation, and effect, being violative of the 15th amendment to the Constitution of the United States, the Honorable Trial Court erred in holding and adjudging, and in instructing the jury in said cause that said laws were and are valid and not unconstitutional, to which plaintiff duly objected and excepted.

4. The said Registration Laws of the State of Oklahoma, (O. S. 1931, Sec. 5654), as made and enforced by the State, abridges the privileges and immunities of plaintiff Lane and of other citizens of the United States of his color and similar-

ly situated, deprives them of liberty and property without due process of law, and denies them the equal protection of the laws; said Registration Laws are violative of the 14th Article of Amendment to the Constitution of the United States. The trial court erred in holding, adjudging, and in instructing the jury that said laws were valid and not violative of the said 14th Amendment.

5. It appearing that there was abundant evidence to establish that the plaintiff Lane was duly qualified to be registered and to vote as an elector in said State at the times in question, and that the defendants had, acting jointly and severally, wrongfully prevented his registering or voting, the cause should have been submitted to the jury under proper instructions from the court; and in refusing so to submit said cause to the jury with proper instructions, the trial court committed error prejudicial to the rights of plaintiff, to all of which plaintiff then and there saved exceptions.

Wherefore, said plaintiff, I. W. Lane, respectfully prays this Honorable Court to vacate and set aside said order, verdict and judgment rendered and made in said cause, and to allow said plaintiff a new trial herein.

Dated this 23rd day of April, 1937.

I. W. LANE,

Plaintiff.

By CHARLES A. CHANDLER,

CECIL E. ROBERTSON,

Attorneys for Plaintiff.

Filed Apr. 23, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Journal Entry.

This cause came on for trial at Muskogee, Oklahoma, on the 19th day of April, 1937, in term time of this Court, the plaintiff, I. W. Lane, appearing in person and by his attorneys Charles A. Chandler and C. E. Robertson, the defendants appearing in person and by their attorneys, Charles G. Watts, Gordon Watts, and Joseph C. Stone.

And thereupon the Court heard the motion of the defend-

ants to require the plaintiff to elect whether he would assail and challenge the Oklahoma statutes which provide for the registration of electors, upon the alleged ground of unconstitutionality, or rely upon the statutes. And the Court being duly advised, said motion was overruled, to which ruling the defendants and each of them excepted. And a jury was duly empaneled and sworn in the cause.

And thereupon the defendants and each of them objected to the introduction of any evidence upon behalf of the plaintiff, upon the alleged ground that plaintiff's petition fails to state a cause of action against the defendants, or either of them, which objection was, by the Court overruled, to which ruling the defendants and each of them excepted. And the evidence upon behalf of the plaintiff was heard.

Whereupon the defendants and each of them demurred to the evidence upon behalf of the plaintiff, upon the ground that the evidence did not establish facts sufficient to constitute a cause of action against the defendants or either of them, which demurrer to the evidence was by the Court overruled, to which ruling the defendants and each of them excepted.

And the trial of the cause having continued until the 20th day of April, 1937, and the defendants having introduced their evidence, and the plaintiff having introduced his rebuttal evidence, and all the evidence having been heard fully by the Court, the parties rested. Thereupon the defendants and each of them moved for an instructed verdict in favor of the defendants and against the plaintiff, which motion, having been heard by the Court, was sustained, to which ruling the plaintiff excepted.

And the Court having instructed the jury to return a verdict against the plaintiff and in favor of the defendants, the jury on the 20th day of April, 1937, returned the following verdict, to-wit:

“VERDICT—We the jury in the above-entitled cause, duly empaneled and sworn, upon our oaths, find the issues in favor of the defendants and against the plaintiff—(Signed) J. J. Ammons, Foreman.”

To which verdict the plaintiff excepted, and exceptions were allowed him. Whereupon the verdict was duly filed on said date, in open court.

And the plaintiff having filed his motion for a new trial, which motion came on for hearing on this the 9th day of June, 1937, a day in term time of this Court, the parties appearing by their respective attorneys of record, and the Court being duly advised,

It Is, on this the 9th day of June, 1937, Ordered, Adjudged and Decreed that the plaintiff's motion for new trial be and the same is hereby overruled, to which the plaintiff excepts, and exceptions are allowed him.

And the verdict of the jury having been examined and considered by the Court, It Is Ordered, Adjudged and Decreed that said verdict be and the same is hereby approved to which the plaintiff excepts, which exceptions are allowed.

Wherefore, on this the 9th day of June, 1937, It Is Further Ordered, Adjudged and Decreed that judgment be and the same is hereby rendered and entered for the defendants and each of them, and against the plaintiff, and It Is Adjudged and Decreed that the defendants go hence without day and that they recover their costs herein from the plaintiff, for which costs let execution issue after (30) days from this date. To all of which the plaintiff excepts, which exceptions are allowed.

And thereupon in open court the plaintiff gave notice of his intention to appeal to the United States Circuit Court of Appeals for the Tenth Circuit.

Done in open court this 9th day of June, 1937.

ALFRED P. MURRAH,

Judge.

Filed in open court Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Bill of Exceptions.

Be it remembered that on the 19th day of April, 1937, a regular term day of the District Court of the United States for the Eastern District of Oklahoma, the above entitled and numbered cause came on for trial at Muskogee, Oklahoma, before the Honorable Alfred P. Murrah, Judge.

The plaintiff, I. W. Lane, appeared in person and by his

attorneys, Charles A. Chandler and C. E. Robertson: The defendants, Jess Wilson, John Moss, and Marion Parks, appeared in person by their attorneys, J. C. Stone and Watts & Watts.

A jury was duly empaneled and sworn and the trial proceeded.

In open court the defendants, by their counsel, objected to the introduction of any evidence, in the following words:

"Come now defendants, and each of them, and object to the introduction of any evidence on behalf of the plaintiff for the reason that the plaintiff's petition does not state facts sufficient to constitute a cause of action against the defendants or either of them, nor does the petition state facts sufficient to entitle plaintiff to any relief. By The Court. Overruled at this time. By Mr. Stone. Note our exceptions." (Page 2)

Evidence on Behalf of Plaintiff.

The plaintiff, I. W. LANE, was called as a witness for plaintiff, and having been first duly sworn, testified, substantially, as follows:

That witness, I. W. Lane, was approximately 70 years of age; was born in Talladega County, Alabama, and has lived in Oklahoma over 29 years. That witness lives in the town of Red Bird, Wagoner County, Oklahoma, and has lived there since 1908. (Page 1)

That witness voted in Alabama, and in Oklahoma in 1910 and in 1912, but that witness has not voted since said time. That in every election year witness has made application for registration, but that witness did not vote after 1912 because witness could not get registered. (Page 2)

"Was there a law in Oklahoma that prevented you from voting?

By Mr. Stone: Objected to as incompetent, I doubt that the witness is qualified to state there was a law and can state what the law is. This witness is invading the province of the court."

Examination by Mr. Robertson Resumed.

"Why didn't you vote after 1912?

By Mr. Stone: Object to as incompetent. Irrelevant and immaterial.

By The Court: Overruled.

By Mr. Stone: Note our exceptions."

After the above proceedings said witness proceeded to testify: That witness did not vote after 1912 because in 1914 there was in operation the grandfather clause; and in 1916 there was the registration law, under which witness could not register. That witness made application for registration in 1916, and at the time witness had been living in Oklahoma since 1908; had lived in the precinct where witness now lives, and in Wagoner County more than six months. That plaintiff at said time lived in Gatesville precinct No. 1, where witness has lived ever since he has been in Wagoner County. (Page 4)

That witness has never been convicted of a felony, nor served a term in the penitentiary, nor been an inmate of a poor house or public prison, nor adjudged insane. (Page 4) That in 1916 the registrar was a man named Workman. That when witness applied to said Workman for registration, said Workman stated that he did not have the registration books—He said he had had them but had returned them. (Page 5) That witness in 1916 made only one application to Mr. Workman for registration. Some of the boys that were with witness went over there: and it seems that a Mr. Dennison had the books. (Page 6)

That in 1918 the registrar was, as far as learned by witness, a Mr. Atterberry, whom witness told "We come to register", and he replied that he did not have any order to register colored people. That witness in 1920 made application for registration to the same Mr. Atterberry, who seems to have held the office for two years, and at this time the reply of said Mr. Atterberry was that he did not have any orders to register colored people, but would have to see the County Registrar before he could do anything about it. That witness went to said registrar during the registration period. That witness tried to register in 1922, and again in 1924, and during every year. (Page 8)

That just before the general election in 1934, while the registration books were open, witness, accompanied by four others, went before Marion Parks, defendant, and told him

that witness and said parties desired to be registered; but that said Parks replied, "Well, I was instructed by the higher-ups not to register any colored people". That Parks stated the higher-ups were Jess Wilson, County Registrar, and John Moss, County Judge. That Parks did not register plaintiff nor give him a registration certificate. That the persons with said witness at the time of said application were Washington Taylor, J. M. Jackson, H. A. Cullam and Jim Ellis. (Page 10)

That during these times when witness attempted to find the registrars, witness always had trouble locating them—"couldn't hardly find them anytime". The nature of the difficulty would be that the registrar had gone away from home. Witness would have to return three or four times, sometimes about sun-up or sun-down. That when witness would locate said registrars they would tell witness that they did not have any orders to register witness.

That in 1934 witness spoke to the County Registrar, Jess Wilson, defendant, about the refusal of precinct registrars to register witness. That witness had looked for a precinct registrar for three or four days and could not find one. Then witness went to said Mr. Wilson and inquired who had been appointed as precinct registrar. That Wilson replied that at the time he had not appointed a registrar (for said precinct) but that he would within a day or two. That witness requested said Wilson, as County Registrar, to register witness but that Wilson replied that the County Registrar could not register anyone—that a person had to register at the precinct. That at that time the registration books had been open three or four days. That said books opened twenty days before an election and closed ten days before the election. (Page 12) That several other persons went with witness when he interviewed said Mr. Wilson, County Registrar.

That a day or so after witness saw Mr. Wilson, witness received information that the defendant, Parks, was Precinct Registrar; and witness went immediately to said Mr. Parks and requested of him registration; that Mr. Parks stated he hoped witness would not think hard of him; Parks did not ask witness nor his companions, anything, nor did he ask if witness were a qualified elector.

On Cross Examination by Mr. Stone, this witness testified, substantially, as follows: That since 1916 witness has

gone to the polls and offered to vote. Witness cannot recall the exact year, but he so offered to vote in Fussy Creek, where an election was held. Witness does not remember asking leave to vote in 1934 after the registration period; but that witness did ask leave to vote, about the year 1920.

That witness knows James L. Pace, who now lives in said Gatesville Precinct No. 1, but that witness did not apply to him for registration in the year 1916. (Page 15)

That following failure of witness in 1934 to get registered, witness did not appeal to the District Court of Wagoner County, Oklahoma, from the decision of the registrar, but that witness appealed to this court (by this action). That in a former action in this court (involving plaintiff's rights under the 1916 registration laws) and also in former trial of this instant cause, the Honorable Robert L. Williams, Judge, read from said 1916 registration laws as follows:

"Such action may be reviewed by the District Court of the County by the aggrieved elector by his filing within ten days, with the Clerk of said Court, his petition, whereupon summons shall be issued to said registrar, requiring him to answer within ten days and the District Court shall give an expeditious hearing, from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases." (Page 17)

J. A. CULLAM was next called as witness on behalf of plaintiff, and having been first duly sworn, testified, substantially, as follows: That witness lives in Gatesville Precinct No. 1, Wagoner County, Oklahoma, and has lived there something like 25 years. That witness is a taxpayer in the County. That witness has voted in Oklahoma, in Muskogee County, about 1906, 1907 or 1908.

That witness removed from Muskogee, about 1909. That witness did not vote in 1916. That witness went to a registrar, about 1916, to the best of his recollection, making application for registration to a Mr. Atterberry and a Mr. Workman. (Page 22) That neither gave to witness a registration certificate: that said Mr. Atterberry told witness that Mr. Moss, then County Attorney, told him not to register any colored people until he was further instructed. And that said

Mr. Workman told witness the same thing. That neither asked questions about the qualification of witness. That said registrar told witness that he was told not to register any colored people. That witness had not voted since 1916. (Page 25) That witness made application for registration in 1918; believes he made application to everybody that had the registration books. Witness cannot recall who the registrar was in 1918.

That witness made application for registration in 1934—he believes to Mr. Parks and Mr. Lawrence. That witness made application to Marion Parks for registration, but does not remember the exact date. That witness went to see Mr. Parks before going to see Mr. Lawrence. That he went with plaintiff Lane and was accompanied by two or three others whose names witness does not remember. (Page 29)

That witness and others requested Mr. Parks to register them. That Mr. Parks replied that the higher-ups had told him not to register any colored people. That this conversation took place during the registration period of 1934, at Park's house, while the registration books had been open. That Parks stated that Mr. Wilson and Mr. Moss gave him these instructions about not registering colored people. That witness never talked to either Mr. Wilson or Judge Moss about this matter.

On Cross Examination, by Mr. Watts, the witness, Culam, testified, substantially, as follows:

That witness first voted in Muskogee County about 1906, 1907, or 1908; that in 1906 witness was living on Fourth Street in the City of Muskogee, and voted in the city election, probably before statehood. That witness went to Wagoner County in 1909, but did not vote there. That witness and others were prevented by the grandfather clause from voting, but witness does not remember how the registration ran about that time. That in 1916 witness applied to Workman, as Precinct Registrar in Gatesville Precinct No. 1, for registration; and, if witness remembers, he went to see Mr. Atterberry the same year. Mr. Atterberry said that John Moss would tell him, give him further instructions how to register colored people, but to go ahead and to register white people. (Page 32)

That witness does not think he applied to Mr. Pace as

registrar at said time; that witness and others started to see Mr. Pace, but someone told them it was no use.

That witness remembers that the registration law was passed immediately after the grandfather clause; and immediately after that law, witness applied to Mr. Workman and to Mr. Atterberry. That witness applied for registration to every registrar, excepting possibly, Mr. Pace. That witness is not positive that the registration law was passed in 1916. That witness started down to make application to said Mr. Pace and was told that he was not registrar. That witness knows Mr. Pace.

That in 1934 witness made application for registration to Mr. Parks, and, after that, to a Mr. Lawrence, who witness thought was county man (County Registrar). That witness first went to see Mr. Parks who told witness that he could not register witness because the higher-ups told him not to. That the higher-ups were John Moss and Jess Wilson, the County Registrar. It must have been during the preceeding election when witness applied to the Mr. Lawrence. That witness went to see Jess Wilson, but never did get to see him.

That Parks was Precinct Registrar of Gatesville Precinct No. 1; and witness was accompanied by Mr. Lane, Joe Johnson, Washington Taylor, and Morris Allen. That witness cannot remember the day or the month. That Mr. Parks was called out of his home about dark and Mr. Lane inquired if he was registrar, to which Mr. Parks replied that he was. That Lane asked him to register him, but Parks replied that he could not register us: that the higher-ups told him not to register colored people; and Parks said the higher-ups were Mr. Moss and Mr. Wilson. That witness did not go to see Mr. John Moss. Witness did not ask the registrar to register witness: only Lane did the talking then.

WASHINGTON TAYLOR, called as witness for plaintiff and having first been duly sworn, testified, substantially, as follows:

That witness lived in the town of Red Bird, Oklahoma, and has lived there about thirteen years; but has lived in the State of Oklahoma since about 1910, or about 27 years. That witness knows plaintiff Lane in this case. That in the 1934 election witness made application to Marion Parks as regis-

tration officer, same being during the registration period before the election; and while the registration books were open. That witness was accompanied by plaintiff Lane, one Ellis, J. M. Jackson, and Mr. Cullam. That Lane inquired of Parks if he were registrar, and Parks answered that he was and stated, "Boys, I hate to tell you, but the higher-ups told me not to register no colored people". And Mr. Parks stated that the higher-ups were Judge Moss and Mr. Jess Wilson. That Mr. Parks did not register Lane nor any of the others, although they asked him to register them. That Mr. Parks did not ask any questions about the qualifications of said applicants.

That witness has lived in Wagoner County, Oklahoma, since 1910, but has never voted in Oklahoma. That witness did not in 1916 speak to anyone about being registered. (Page 40)

On Cross Examination by Mr. Stone, said witness testified, substantially, as follows: (41)

That witness testified before in a trial of this case on or about January 14, 1935, at which time witness did not use the word "higher-ups", he just called the names (Mr. Moss and Mr. Wilson): Mr. Parks said "higher-ups" and that would mean Mr. Moss and Mr. Wilson. That on a former trial, counsel (Mr. Stone) did not ask witness anything about higher-ups.

That witness has not been training for this trial, and no one had refreshed the memory of witness about the higher-ups. (42)

J. M. JACKSON, called as witness for plaintiff and being first duly sworn, testified, substantially, as follows:

That witness lives at Red Bird, in Wagoner County, and has lived there about 28 years. That witness lives in election precinct, Gatesville No. 1. That witness has never voted in Oklahoma since the year 1911, as witness believes the date was.

That witness knows I. W. Lane, and in 1934 went with Lane, Taylor, Cullam, and Ellis to Mr. Parks. That Lane told Mr. Parks that he came to get registered, but that Mr. Parks stated that he was sorry, but he had been instructed

not to register any colored people. Mr. Lane inquired of Mr. Parks who had so instructed him. Parks told Lane that the higher-ups had so instructed him. Parks told Lane that the higher-ups were Mr. John Moss and Mr. Jess Wilson. That witness and companions were together at said time when application for registration was made, but that Mr. Parks did not register any of them. That Mr. Parks asked something about the qualification of said applicants—they talked about it, but witness cannot repeat what was said. That witness did not see anyone else about getting registered: he did not go any further. (45)

On Cross Examination by Mr. Stone, the witness testified, substantially, as follows:

That witness testified on former trial of this case but did not use the word "higher-ups", said word not being asked for. Witness has related the conversation between Marion Parks just as it occurred: witness just answered what was asked. That witness did not consider the word "higher-ups" the main part of the story. That witness has talked to the lawyers about the case, but not about what his testimony would be at this time. That witness has talked to said lawyers from time to time. At the command of the court, the testimony of witness upon former trial was read from transcript thereof as follows, to wit:

"Do you recall what Mr. Lane said to Mr. Parks? Well, he told him we came over to register. What did Mr. Parks say? Well, Mr. Parks said he couldn't do it; he had been advised not to register any colored people. Did he say who had advised him? Yes, sir, he said that Mr. John Moss and Mr.—the registrar, I can't just call his name."

That witness now remembers the use of the word, "higher-ups", because witness has thought more about what Parks said. (47)

On Re-direct Examination, the witness testified, substantially, as follows:

That the lawyers talked to witness about this case, but did not advise in any way how witness should testify.

And on behalf of Plaintiff there were introduced in evidence Volumes 1 and 2 of the Registration Records of Wag-

oner County, Oklahoma, showing the list of electors registered, over the registration periods from 1916 down to date, for the specific purpose of showing the number of Negroes registered during the periods, and to show the number registered whose names were stricken from the record. (T 51)

"By Mr. Stone, counsel for Defendants: It is agreed, upon our part, that these are the records, they may be offered without proof of authenticity, but we object to the offer upon the grounds that the evidence is immaterial, incompetent and irrelevant, and in support of the objections we invoke the rule which generally prevails, as stated in 148 Federal Reporter, page 513. * * *

In the case of Grainger vs. Douglas Park Jockey Club, decided by the 6th Circuit Court of Appeals, the rule being just announced: 'The constitutionality of a statute must be determined by its provisions and not by the manner in which it is in fact administered.'

By The Court: Overruled.

By Mr. Stone: Do we go into the whole manner of administration of law in Wagoner County? It has nothing to do with these persons, how they administered the law. He is undertaking to establish the whole effect of the proceedings throughout Wagoner County during the whole period from 1916 up to date: and against that the defendants object.

By The Court: I am familiar with that rule.

By Mr. Stone: Nor have they introduced evidence, your Honor, to connect these defendants with any maladministration of the law throughout this period. These defendants are on trial for the particular act alleged with respect to 1934. * * * I, therefore, now move that the allegations of his petition, insofar as they seek to show, the practice in Wagoner County, Oklahoma, whereby it is alleged and claimed that Negroes were barred from registering, be stricken. (53)

By The Court: Overruled at this time.

By Mr. Stone: Note our exceptions.

By Mr. Chandler: I have already offered it for that purpose. Of course, these being public records, I wish

leave to dictate these parts into the record and withdraw these.

By Mr. Stone: That is all right.

By Mr. Chandler: We are not claiming damages on that, but it goes to the operation of the statute. . . .

By Mr. Stone: Or, you may do this if it is agreeable, state the general results of this, if you have counted the names subject to our objections, and let the reporter take the books and copy into the record.

By Mr. Chandler: Now, subject to the objection of counsel for the defendants, these records, Volumes 1 and 2 of the Registration Records of Wagoner County, Oklahoma, for the registration periods commencing in 1916, down to 1936, reveal this result: during the registration period of the year 1916 there were registered in Wagoner County eleven Negro electors; that there was no further registration of a Negro elector, as shown by said records, until 1926; that in 1926 there was one Negro recorded registered. Then, in 1928, there was one Negro registered in Wagoner County; then, from 1928 down to 1934 there was not a single Negro registered in Wagoner County, as shown by these records. And in 1934, at the time of which this plaintiff Lane is complaining, and at the time Jess Wilson was the registrar in Wagoner County, there were registered in said Wagoner County fifty Negro electors; and said County Registrar, Jess Wilson, struck the names of fifty Negro electors from said records. (55)

By Mr. Stone: To save the record, we move that the evidence be stricken on the grounds that it is incompetent—does not tend to throw any light on the issues now on trial.

By The Court: Overruled, subject to the same qualifications.

By Mr. Stone: Exceptions."

At the request of counsel for plaintiff, the reporter marked for identification plaintiff's exhibit #1, being a transcript of proceedings had in 1934 before Jess Wilson, County Registrar, Wagoner County, Oklahoma, to which transcript coun-

sel for defendants, Mr. Stone, agreed upon the authenticity of the document but not as to its validity.

"By Mr. Stone: We object to this offer, your Honor, as incompetent, irrelevant and immaterial; it has no bearing upon the issues here on trial and while I see nothing irregular about it—it appears to us in accord with the law. If there were any irregularities in that proceeding it has nothing to do with this case—with the rights of the parties herein.

By The Court: Overruled. It is admitted in the same manner and with the same conditions and qualifications as the preceding exhibit.

By Mr. Chandler: Your Honor, please, I ask to introduce this transcript also generally on the merits of our controversy because it shows the purpose of Judge Moss, County Judge, on these proceedings which we claim were invalid and pursuant to the conspiracy.

By Mr. Stone: I object to that.

By The Court: Overruled. Same qualifications."

(This Exhibit No. 1, as to its material parts, is set forth in the Appendix hereto attached as part hereof.)

"By Mr. Chandler: Your Honor, I have here, Department of Commerce Report, fifteenth (15th) census of the United States of 1930, * * * showing the 1930 Census, especially Table 21, page 67, and showing the population of Wagoner County by whites, by Negroes, and total population; and the population of the various townships of Wagoner County.

By Mr. Stone: Objected as not material and has no bearing upon this case.

By The Court: Overruled.

By Mr. Stone: Note our exceptions.

By Mr. Chandler: I would like leave of the court to supply photostatic copy of this one page and withdraw the document."

To which no objection was interposed and permission was granted. Said census report was then introduced in evidence, as Plaintiff's Exhibit #2, same showing, omitting unnecessary parts, the following:

Plaintiff's "Exhibit No. 2."

Composition and Characteristics.

Table 21—Population by sex, color, age, etc., for counties by minor civil divisions: 1930—Con.

County and Minor Civil Division	Total population	Sex		Color	
		Male	Female	White	Negro
Wagoner County.....	22,428	11,600	10,828	14,893	6,753
Adams Creek township. . .	1,371	751	620	1,091	181
Blue Mound township.....	1,636	872	764	1,245	294
Cherokee township.....	364	188	176	321
Coal Creek township.....	1,367	721	646	1,083	256
Coweta town.....	1,274	624	650	1,038	173
Coweta township.....	404	210	194	369	11
Creek township.....	1,524	784	740	1,131	315
Gatesville township.....	2,335	1,222	1,113	1,388	920
Lone Star township.....	1,064	574	490	1,006	51
Okay town.....	248	129	119	165	54
Porter town.....	525	288	237	419	106
Porter township.....	1,885	967	918	925	939
Redbird town.....	218	105	113	218
Shahan township.....	1,166	608	558	708	406
Shannon township.....	1,115	596	519	570	505
Stone Bluff township.....	918	481	437	735	131
Tallahassee town.....	164	78	86	10	154
Tallahassee township.....	1,856	952	904	298	1,537
Wagoner city.....	2,994	1,450	1,544	2,391	497

"By Mr. Chandler, counsel for plaintiff: Now just one more request, your Honor. Since I am submitting these (Registration) Records to the court and not the jury, I wish the court also to peruse these so as to see the varying ages of these people who are registered, as the matter of age becomes important in the administration of this statute.

By The Court: I see."

(The summary of said ages, as shown by said records, is set forth in Appendix hereto, and marked, "Exhibit No. 3.")

Pursuant to a suggestion of the parties, plaintiff Lane was recalled for further re-cross examination by Mr. Stone,

counsel for defendants, and upon re-cross examination plaintiff Lane testified, substantially, as follows:

That witness is plaintiff in this case, and does not know the exact population of the town of Red Bird, Oklahoma, population thereof being approximately two or three hundred people. That said town is incorporated as a town and not as a city. That plaintiff has not appealed to the District Court of Wagoner County from any of the rulings of the several registrars (refusing registration to plaintiff).

On Re-direct Examination, plaintiff Lane testified that not any white people lived in Red Bird, Oklahoma. That six or seven years ago plaintiff was mayor of said town of Red Bird.

At this point counsel for plaintiff announced in open court that plaintiff did rest.

"By Mr. Stone: We wish to renew without extended argument, our motion to require (plaintiff) to elect, because there is a possibility at least, it might be held this is a proper time to present the motion. * * *

We will follow that motion by demurrer to the evidence and I want to refer to one case that has been cited here, which we have examined carefully, in order to distinguish from the line of authorities we relied upon. That is the case of Meyers vs. Anderson. I now renew my motion to require him to elect, without further argument.

By The Court: I will overrule that at this time.

By Mr. Stone: Note our exceptions.

By Mr. Stone: Come now defendants and each of them and demur to the evidence on behalf of the plaintiff upon the grounds that the evidence does not sustain or support or establish a cause of action against defendants or either of them.

By The Court: Overruled.

By Mr. Stone: Exceptions."

Evidence on Behalf of Defendants.

JAMES L. PACE, being called as a witness for defendants, and having been first duly sworn, testified, substantially, as follows: (Direct Examination by Mr. Stone.)

That witness lives at Council Hill. That in 1916 witness lived in Gatesville, Precinct No. 1, in Wagoner County, Oklahoma. That witness was Precinct Registrar in said Precinct for the year 1916, and for the whole year, there being no other registrar in said precinct at that time, witness being registrar for the entire registration period. That witness knows plaintiff Lane, and that said Lane did not in 1916 present himself to witness for registration. (60)

On Cross Examination witness Pace testified, substantially, as follows:

That witness did not register any Negroes in 1916; that no Negroes applied to witness in 1916 for registration, and that witness did not refuse any Negroes registration.

That the County Registrar for Wagoner County in 1916 was one Noah Watts, who appointed witness as Precinct Registrar in the spring of 1916, witness not remembering the specific time; and said County Registrar had witness to sign the legal form (in connection with being appointed Precinct Registrar). That in 1916 witness had only a passing acquaintance with plaintiff Lane, and can remember distinctly that twenty-one years ago said Lane did not apply to witness for registration. That witness registered all Negro voters who applied in that precinct; but does not remember how many Negroes witness registered.

S. T. DENISON, called as a witness for defendants, and being first duly sworn, testified, substantially, as follows: (Direct Examination by Mr. Stone.)

That witness has lived in Porter, Wagoner County, Oklahoma, since the 11th day of February, 1937; that in 1916 witness lived in Gatesville Township; Gatesville Precinct #1, in Wagoner County, Oklahoma. That witness believes James L. Pace was Precinct Registrar in that precinct during 1916, and witness believes said Pace registered witness.

Witness produced his Registration Certificate #22, dated the 30th day of May, 1916, signed by James L. Pace, Registrar, showing registration of said S. T. Denison, as testified to. Said certificate was marked "Defendants' Exhibit #1", and was introduced in evidence with no objection from plaintiff. The substance of said certificate being hereinabove set forth, same is not reproduced in this transcript.

On Cross Examination the witness, S. T. Denison, testified, substantially, as follows:

That witness will be seventy-nine years of age on June 14, 1937; that witness lived in Gatesville, Precinct #1, approximately twenty-six years; he does not know who was Registrar in 1918, but that one W. S. Workman was Registrar in 1920. That witness remembers other precinct registrars but does not remember when they served. There were one Atterberry and one Gentry.

CHRISTOPHER COLUMBUS CASEDIER, being duly sworn, testified on behalf of defendants, substantially, as follows:

That witness lives in Gatesville, Precinct #1, in Wagoner County, Oklahoma. That in 1916 witness lived in Gatesville, Precinct #1, at which time Jim Pace was Precinct Registrar. That thereafter witness left and does not know what took place later. Witness produced in court, without objection from plaintiff, his registration certificate #89, for Gatesville, Precinct #1, showing that said witness, Christopher Columbus Casedier, was duly registered as an elector on May 20, 1916, said certificate being signed by James L. Pace, Registrar. By stipulation said certificate was withdrawn. Witness testified that Mr. Pace issued said certificate.

W. M. CHARTIER, witness on behalf of defendants, being first duly sworn, testified, substantially, as follows: (Direct Examination by Mr. Stone): That witness in 1916 lived in Gatesville, Precinct #1, in Wagoner County, Oklahoma, at which time Mr. Pace, neighbor to witness, was Precinct Registrar. That witness does not know that anyone else was registrar in said precinct at said time. That when witness was called to the army in the latter part of 1918, witness lost his registration certificate.

On Cross Examination, witness testified that he did not remember in what specific part of the registration period witness registered; that witness does not know whether Mr. Pace kept the registration books during the entire registration period. That witness knew Mr. Pace was registrar because he

registered witness, there being no other evidence of his authority as registrar.

R. W. BAKER, witness for defendants, being first duly sworn, testified, upon direct examination by Mr. Stone, substantially, as follows. That in 1916 witness lived in Gatesville, Precinct #1, in Wagoner County, Oklahoma, at which time one Jim Pace, and nobody else, to the knowledge of witness, was Precinct Registrar. That said Pace registered said witness but that the registration certificate of witness was burned two years later.

On Cross Examination, the witness testified, substantially, as follows: that witness does not know how long Mr. Pace served as Precinct Registrar, nor does witness remember in what particular part of the registration period he registered.

From the registration record it was read that said R. W. Baker registered May 8, 1916. That witness does not know whether Mr. Pace registered other electors every day or not.

LON LEE, called as a witness for defendants, being first duly sworn, and examined by Mr. Stone, testified, substantially, as follows:

That witness lived in 1916 in Gatesville, Precinct #1, at which time Jim Pace, and nobody else, to the knowledge of witness, was registrar, and registered voters of said precinct. That witness registered in 1916, but, somehow lost his registration certificate.

STOUT ATTERBERRY was called as a witness for the defendant, and, being first duly sworn, testified as follows, (Examination by Mr. Stone): (75)

That witness lives in Gatesville, Precinct #1, Wagoner County, Oklahoma, and has lived there for twenty-five years. That witness registered in 1916, at which time Jim Pace was registrar. That witness was not registrar for the year 1916, and witness does not believe that said Lane applied to witness for registration in said year, 1916.

On Cross Examination, by Mr. Chandler, witness, Stout Atterberry, testified, substantially, as follows:

That witness was registrar in 1920, just before the primary election, but that witness was not registrar for the entire period, said witness having served as registrar for *part* of said period. That the registration books were sent back to witness just before the general election, at which time witness was out working; and wife of witness advised witness that the registration books had come, but witness refused to serve further as registrar. That on that night or the next night, plaintiff Lane and others came to the home of witness to be registered, but that witness did not register them nor anybody else at said time. That the registration books were at home of witness a day or two, but that someone got them while witness was absent. Witness understood later that one Mr. Workman got said books.

On Re-direct Examination, by Mr. Stone, the witness Atterberry, testified:

That witness declined to serve further as registrar in 1920. That witness knows the man referred to as Workman, said Workman having lived about three miles from his home. That witness did not know where said Workman lived at the time of trial, not having seen him for several years. That said Workman was registrar in 1920, just before the general election, said Workman having succeeded witness as registrar. That said time, just before the general election of 1920, was the first time witness knew of said Workman's serving as precinct registrar in said precinct.

On Re-Cross Examination, said witness testified, substantially, as follows: that witness told the jury and court that when Lane came to the home of witness to be registered the registration books were there but that witness had not received them as registrar; that witness did not register anybody, nor did he intend to register anyone. That the books remained there a couple of days, maybe two nights, and witness does not know who was serving as registrar while the registration books were at home of witness.

J. L. PACE, having been previously duly sworn, testified further, being examined by Mr. Stone, as follows:

That witness is the same Mr. Pace who testified previously in this case; that he was precinct registrar at Gatesville,

Precinct #1, in 1916. Upon being shown page 71 from the registration record of Wagoner County, said witness said that it bore the names of a number of registered electors whom witness remembers registering in 1916, some of them having been registered in May of said year and others in November of said year.

At this juncture Defendants introduced, without objections of Plaintiff, pages 31 and 72 and one name at the top of 73, from Volume 1, County Register of Election, Wagoner County, Oklahoma, in connection with the testimony of said witness.

On further Cross Examination, by Mr. Chandler, the witness, Mr. Pace, testified, substantially, as follows:

That witness remembers registering Mr. Puissner, with whom witness was well acquainted, having known him for two or three years. That witness did not know how long Mr. Puissner had been living in said precinct, he being there when witness left. That said Mr. Puissner lived about two miles from witness all the while up to said registration. That on the registration certificates the age of Mr. Puissner was stated as forty-nine years.

That witness does not remember receiving any instructions from the County Registrar as to who was qualified to be registered in 1916, but witness testified that in November, 1916, witness registered Mr. Puissner who was forty-nine years of age, and a full-blood Indian.

Further, that witness registered a Mr. Childers, white, twenty-four years of age.

By Mr. Chandler, counsel for plaintiff:

"While the books are here, I want it stipulated that the ages of these electors registered vary from twenty-one years old up to eighty."

The testimony of one Jim Biggerstaff, who testified in the former trial of this case, was, by stipulation of parties in open court, read in open court as part of the evidence on behalf of defendants. The material substance of this testimony was that witness is in the newspaper business, and has the custody of the files of the Wagoner County Democrat for the year 1916, in bound volume, same being kept as part of the permanent records of said newspaper. That it appears

from said files and records that in said Wagoner County Democrat, of Wagoner County, Oklahoma, for the issue of April 27, 1916, there was published a list of the registration officers for that year, as follows:

"County registrar, Noah Watts has made the following appointments for precinct registrars. [Registrars for other precincts omitted] Gatesville Precinct #1, Jim Pace."

JESS WILSON, one of the defendants, being first duly sworn, testified, substantially, as follows:

That witness is forty-one years of age, lives at the present time in Tulsa County, Oklahoma, but from the 3rd day of June, 1920, until 1935, witness lived in Porter, Wagoner County, Oklahoma. That in 1932 witness succeeded one Ira Lawrence as County Registrar of Wagoner County, and served as such officer from 1932 until 1935.

That witness knows plaintiff, I. W. Lane, having become acquainted with him about 1920. That said Lane came to see witness about registering said Lane, before the general election or the primary election in 1934, at which time there were three or four persons in the crowd with Lane. That Lane inquired who was going to be precinct registrar for Gatesville Precinct #1, and Lane inquired if he had appointed Carl Lawrence; witness told said Lane that said Carl Lawrence had resigned as precinct registrar, but that witness would try to appoint another registrar on that day. That Lane inquired who the registrar would be and witness told Lane that it would be Benny Harmon, if witness could get him to serve. That such was the gist of the conversation with Lane; that Lane did not ask witness to register him; and that witness did not have authority to register anyone. That after this conversation said Lane left and did not return any more. That on the following day witness appointed the defendant, Marion Parks, as precinct registrar in Gatesville, Precinct #1, northwest of Red Bird, Oklahoma; and said Parks, a well known citizen in that community, served as registrar during that period of registration.

That witness did not in 1934, or at any other time, instruct any registrar not to register Negro electors; nor did witness ever enter into any understanding; nor was there any-

thing of the sort discussed, to prevent the registration of colored persons in Wagoner County, nor any other place. That witness did not ever give any instructions to Marion Parks about registering colored people, nor did witness direct said Parks to impede or hinder colored persons in their effort to register.

That on the morning on which witness appointed said Parks as precinct registrar, said Parks came in for the registration book as witness was leaving his office; that witness gave him the registration book and told Parks that Mr. Moss would instruct him in regard to the registration laws. That at said time Mr. Moss was County Judge.

That witness did not have any conversation, nor agreement, nor understanding with Judge Moss as to what instructions he would give to Parks.

That witness had nothing to do with compiling the registration records, such being the duty of the County Clerk. That the only thing done by the witness, with regard to said registration records, was to turn in the registration certificates.

On Cross Examination, the witness, Jess Wilson, testified, substantially as follows:

That while witness was registrar some Negroes were registered. That witness did not move to strike the names of said Negroes from the register—witness was told to have it done, Judge Moss, Frank Young and one Ivan Baldrige having asked for that to be done. That some of the persons whose names were stricken from the registration record were registered by a man named Goddard, whom witness had appointed as registrar. That in a majority of the cases of appointing registrars they were given commissions, but that witness does not believe said Goddard had a commission, said Goddard having been appointed just by oral agreement.

That the names stricken from the registration record were stricken because of a higher decision on the question of the legality of their being competent voters. That witness, as County Registrar, had a hearing, and after summons were had upon them, and upon the evidence showing, said names were stricken off, because in the judgment of witness they were the names of illegal voters. That only four or five, out

of approximately fifty-seven who were summoned, appeared. That witness struck the names off said record after having heard the evidence, basing the findings of witness, as County Registrar, on what he thought the evidence was.

The defendant, JUDGE JOHN MOSS, being first duly sworn, and examined by Mr. Stone, testified on behalf of the defendants, substantially, as follows:

That witness is County Judge of Wagoner County, Oklahoma, and defendant in this suit. That witness has been County Judge since January, 1933; that witness was representative in the Legislature in 1910, becoming County Attorney by appointment on the 21st or 22nd day of December, 1919, that being the first time witness was County Attorney of Wagoner County. That witness was not, as formerly testified in this cause by some witnesses for plaintiff, County Attorney of Wagoner County in 1916. That witness did not, as charged in this case, enter into a conspiracy with anyone to deprive plaintiff Lane or other Negroes in Gatesville, Precinct #1, of their rights or alleged rights to vote; nor did witness enter into any understanding, agreement; conspiracy, or anything of that sort with the defendants, or either of them, in any such manner. That witness did not ever instruct his co-defendant, Marion Parks, in any way whatsoever not to register plaintiff Lane. That witness did not ever instruct said Marion Parks or advise him in any way whatsoever not to register plaintiff or other colored persons.

That co-defendant Parks advised with witness about his duties as registrar prior to his service as such in 1934. That witness had a letter turned over to him by one Jim Biggerstaff, a newspaper man at Wagoner, and witness just read said letter to Mr. Parks and when witness was through reading said letter to Parks witness told Parks that said letter practically stated the law as witness understood it, and as witness had been interpreting it since 1920. That said letter appeared to have been written originally by one Lowe, editor of a newspaper known as "The Lantern", published especially for Negroes and by Negroes. Without any objections, said letter was marked for identification, as "Defendants' Exhibit #2", and introduced in evidence, said letter being as follows:

L. W. LANE V. JESS WILSON, ET AL.

"Headquarters
Negro Democratic State Organization
228 1/2 North Second Street
Muskogee, Oklahoma.

June 20th, 1934

Mr. J. M. Biggerstaff, Editor,
The Wagoner Record
Wagoner, Oklahoma.

Dear Sir:

"A word from one Democratic editor to another--I am, as you will notice, Publicity Director of the Negro Democrats of the state. There has come to my attention that an effort will be made to discredit Negroes of the state in that they are forced to register as Democrats. I know here in this county and in other counties where Negroes have registered in large numbers, no efforts were made to force them to register as Democrats.

At the approaching registration period I hope no efforts will be made in your county to force Negroes to register as Democrats or to prevent the few eligible under the law from registering.

There will not be more than 100 in your entire county eligible to vote at this time under the law, which only allows those coming of age since last registration time or who have moved into the state one year since last registration and, of course, have lived in the county and precinct the required time.

Negroes in this county are mostly registered Democrats because they are anxious to have a voice in selecting public officials. Certainly we would not expect violating our laws to begin at registration periods.

Hoping all will end well for us, we are,

Very truly yours,

C. G. Lowe, Editor

The Muskogee Lantern, Negro
Democratic Newspaper and
Publicity Manager Negro Democratic State Organization."

With respect to said letter the witness, Judge Moss, testified:

"It might be well for me to state that I didn't read that long letter, to Mr. Parks. I only read that part of it which referred to those whom they thought might be eligible to register in Wagoner County—that is, who had become twenty-one since the last registration, those who had moved into the county or had moved into his precinct with transfer certificates. I didn't undertake to impress anything else in that letter, upon Mr. Parks."

That witness merely said to Parks that said letter, or that part of said letter in the judgment of witness, was a true statement of the law; that such is still the opinion of the witness, and that such is all the directions, advice, or suggestions witness gave Parks at said time.

The defendant, MARION PARKS, being duly sworn, examined by Mr. Stone, testified on behalf of the defendants, substantially, as follows:

That witness was registrar in 1934 in Gatesville Precinct #1, Wagoner County, Oklahoma. That witness knows plaintiff Lane. That witness did not state to said Lane, on the occasion to which Lane referred, and when Lane and others came to the home of witness, that witness had been instructed by the higher-ups not to register the Negroes. That witness did not say anything of that sort. That witness did not tell Lane that witness had been instructed or advised by Judge Moss not to register Negroes. That witness did not tell Lane at said time that witness had been advised or instructed by defendant Jess Wilson not to register Negroes or colored persons. That nothing of that sort occurred.

That witness recalls Judge Moss' referring to that letter when witness was in his office, Judge Moss having read to witness from said letter. That witness does not remember the exact words had with Judge Moss in said conversation, but witness does remember inquiring of Judge Moss about registering people who had become twenty-one years of age, and Judge Moss stated to witness "You register all that have become twenty-one since last registration". That Judge Moss advised witness to register all whom witness thought to be legal voters. That at said time witness did not have any un-

derstanding, agreement, or conspiracy, or anything of that sort with the defendants, nor with either of them, whereby it was understood that witness was to prevent Negroes from registering. That witness does not have any malice or ill feeling against these colored people. That witness was acting in good faith, honestly and fairly trying to follow the law, treating all alike, telling them the law, whether white or colored.

On Cross Examination, by Mr. Chandler, witness testified, substantially, as follows:

That witness did register white people from twenty-one years of age and up, the exact number witness being unable to remember, nor does witness remember their ages, nor all of the people registered at that time. That witness did not register Mr. Lane (plaintiff) because Lane had no papers showing he had ever registered. That witness asked him if he had ever registered, to which Lane replied that he had not. That witness told Lane, "I can't register you, if you have never registered unless you have become twenty-one since the last registration." That witness asked the white people whom he registered the same question. That the said white people had papers to prove that they were eligible voters. That the white electors registered by witness did not have certificates, they had proof they were eligible voters—they had witnesses to prove it. The basis of their eligibility was that they had been in the state one year, in the county six months, and in the township thirty days, witnesses meaning those electors who had just become twenty-one years of age and had no certificate of registration. Those over twenty-one had certificates from their precincts and they had voted. That witness registered eighty-six electors that proved that they had registered.

That witness did not mean to tell the court and jury that every person over twenty-one years of age, whom witness registered, was a person who had a transfer—they had proved that they were legal voters in different ways. Some had lived in the precinct different lengths of time, but there were none that lived in the precinct that had not registered since they moved in, since the last registration. All that witness registered in 1934 were those that had moved in since the last registration period. Those electors who moved in had to prove

to witness that they were legal voters, and in other cases they had registration certificates, and exhibited them to witness.

On Re-direct Examination, the witness Parks, examined by Mr. Watts, testified further, substantially, as follows:

That other than the plaintiff Lane and those who were certified, no other colored persons applied to witness for registration. That Lane and his associates were together when they were talking to plaintiff, there being four or five of them, and Lane doing the talking for said colored people. That the others did not discuss the matter with witness. The conversation between witness and Lane is all that took place.

Rebuttal Testimony of Plaintiff.

WILLIAM OLIVER, called as a witness for plaintiff, and being duly sworn, and examined by Mr. Robertson, testified as follows:

That witness is a preacher, sixty-eight years of age, lives in Red Bird, Oklahoma, and has lived there twenty-four years. That witness knows Lane, and during the registration period in 1916 plaintiff went with Lane to a man named Workman, who was the only registrar witness knew at that place. That witness did not know a man by the name of Pace.

On Cross Examination, by Mr. Stone, said witness testified:

That witness remembers Workman was the registrar in 1916, because it was the first year witness came to Oklahoma, and witness went to see the registrar in the fall of the same year. That said Workman told witness that he was not the registrar but that one Mr. Denison was registrar.

Plaintiff, I. W. LANE, was recalled as a witness for plaintiff, and testified further:

That the statement of Mr. Parks to the effect that Parks said nothing to witness about an order from the higher-ups was false.

Both sides announced in open court that they rest.

Motion of Defendants for an Instructed Verdict.

"By Mr. Stone: The defendants now and each of them move for a directed verdict in favor of the defendants and each of them against the plaintiff."

Request for Instructions by Plaintiff.

In open court the plaintiff Lane presented to the Court, and requested the court to instruct the jury, as is set forth in the following written requests for instructions, to-wit:

Plaintiff's Requested Instruction No.1.

Gentlemen of the jury, you are instructed that Section I of Article III, Section 13446 Oklahoma Statutes, 1931, provides in substance that the qualifications of an elector are that he must be a male citizen of the United States over the age of 21; that he must have resided in the State one year, in the county six months; and in the election precinct thirty days next preceding the election at which any such electors offer to vote.

You are further instructed that if you find from a preponderance of the evidence that the plaintiff, I. W. Lane, possessed such qualifications on the 24 day of October, 1934, and made application for registration on said day to the defendant Marion Parks, he, said I. W. Lane, was entitled to register.

Charles A. Chandler,

C. E. Robertson,

Attorneys for Plaintiff.

Requested by Plaintiff,

Refused and excepted to

Alfred Murrah,

U. S. District Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 2.

Gentlemen of the jury, you are instructed that the Oklahoma Constitution, Section 1, of Article III, O. S. 1931, Sec. 13446, provides as follows, to wit:

"The qualified electors of this state shall be citizens of the United States, including persons of Indian descent, (native of the United States), who are over the age of twenty-one years, and who have resided in the State one year, in the County six months, and in the election precinct thirty days, next preceding the election at which such elector offers to vote. Provided, that no person adjudged guilty of a felony, subject to such exceptions as the Legislature may prescribe, nor any person, kept in a poor house at public expense, except Federal, Confederate, and Spanish-American ex-soldiers or sailors, nor any person in a public prison, nor any idiot or lunatic, shall be entitled to register and vote."

And you are further instructed that if you find from the evidence that the plaintiff I. W. Lane possessed each of the aforesaid qualifications on the 24th day of October, 1934, and on said day made application to the defendant Marion Parks, the precinct registrar, said Lane was under the laws and Constitution of Oklahoma entitled to be registered.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to.

Alfred Murrah,
Trial Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 3.

Gentlemen of the Jury, you are instructed that Section 1 of Article 14 of the Amendments to the Constitution of the United States provides as follows, to wit:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

And that the Congress of the United States has enacted and passed Section 1979, R. S. which provides as follows, to wit:

"Section 1979. Civil action for deprivation of rights —Every person who, under color of any statute, custom, or usage of any State or Territory, subjects any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

And the jury is further instructed that the above-quoted 14th Amendment and act of Congress are the Supreme Law of the Land, and the Judges in the States are bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

The jury is further instructed that Section 5654, O. S. 1931 part of the Oklahoma Registration of 1916, and which the defendants Marion Parks and Jess Wilson plead as justification for refusal of Registration to the plaintiff Lane, is, as administered by the State of Oklahoma and its officers, agents, and servants, acting under its authority, violative of said 14th Amendment and said Act of Congress, in that said Section 5654, O. S. 1931, denies to the Negro citizens of the United States residing in Oklahoma and subject to its jurisdiction the equal protection of the laws: and said Section 5654, O. S. 1931, is unconstitutional, null and void, and does not constitute any justification or defense to the officers, agents, or servants of said State of Oklahoma for the refusal of registration to citizens of the United States otherwise qualified for registration.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to
Alfred Murrah,
Trial Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 4.

Gentlemen of the Jury, you are instructed that the 15th amendment to the Constitution of the United States provides as follows, to wit:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation."

And you are further instructed that, pursuant to said 15th amendment, the Congress of the United States passed and enacted the following acts, to wit: R. S. 2004, Sec. 31, of Chapter 3, Title 8, U. S. Code, which provides as follows, to wit:

"Section 31. Race, color or previous condition of servitude not to affect right to vote. * * * All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinctions of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

And the Congress also enacted and passed R. S. Sec. 1979, Section 43, of Chapter 3, Title 8, U. S. Code, which provides as follows, to wit:

"43. Civil action for deprivation of rights.—Every person who, under color of any statute, custom or usage of any State or Territory, subjects any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

The jury is further instructed that by Article VI of the Constitution of the United States the above mentioned 15th amendment and acts of the Congress are the Supreme Law of

the land, and the Judges in every State are bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding. Further, that plaintiff has instituted this action under and pursuant to said acts of the Congress of the United States.

And the court further charges the jury that the defendants, by their answer filed in this action, contend that the denial and refusal of registration of the plaintiff Lane during the registration period including the 24th day of October, 1934, was in compliance with the 1916 Registration Laws of the State of Oklahoma, to wit: Sections 5652, 5654, O. S. 1931.

The court further charges the jury that the aforementioned Section 5654, O. S. 1931, does not constitute any defense to the defendants for the refusal to register said Lane, if the jury finds from a preponderance of the evidence that they or any of them did refuse him registration, for the reason that said Section 5654, O. S. 1931, is invalid and void, and unconstitutional as being violative of the 15th amendment to the United States Constitution, and discriminatory against the Negro citizens of the United States residing in the State of Oklahoma.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to

Alfred Murrah,
Trial Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 5

Gentlemen of the Jury, it is charged by the petition of plaintiff herein that the defendants John Moss, Marion Parks, and Jess Wilson denied the plaintiff Lane the right to register during the 1934 registration period; and that such denial was directly due to a long-standing conspiracy which had existed among the election officers of Wagoner County, Oklahoma, and their successors, since 1916, and which conspiracy continued to exist and did exist on the 24th day of October, 1934, among the three defendants aforementioned.

In this connection, the court charges you that a conspiracy is a combination between or among two or more persons by concert of action to accomplish some unlawful purpose, or some lawful purpose by unlawful means.

And the court further instructs the jury, that, as a matter of law, that if it is found from a preponderance of the evidence that if such conspiracy existed on the 24th day of October, 1934, among said defendants, Jess Wilson, Marion Parks, and John Moss, or any of them, and that pursuant thereto and in furtherance thereof, said defendants or any of them, hindered, obstructed or prevented members of the Negro race, including plaintiff Lane, from registering as electors of Wagoner County, Oklahoma, then the verdict of the jury should be in favor of the plaintiff Lane and against such of the defendants as you find from a preponderance of the evidence were parties to such conspiracy, or actively participated therein.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to
Alfred Murrah,
Trial Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 6.

Gentlemen of the jury, the court instructs you that if you find from a preponderance of the evidence that the plaintiff Lane is entitled to recover in this action, the amount of the recovery is for you to determine from all the facts in the case. Of course, you can not measure in dollars and cents the exact amount to which he is entitled, but it is for you to say, in the exercise of a sound discretion, from all the facts in the case, without fear and without favor, what amount will reasonably compensate him for the damage done him in being deprived of his right of franchise.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to

Alfred Murrah,
U. S. District Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 7.

Gentlemen of the jury, the court instructs that in addition to the compensatory damages prayed for by the plaintiff in his petition, he also seeks to recover from the defendants, the sum of \$5,000, as punitive damages. In this connection, the court charges you that punitive damages are awarded for the purpose of punishing the defendants for the wrongful act, and setting an example before the community. If then, you find by a preponderance of the evidence in this case, that the defendants, or any of them, were actuated by feelings of ill will and prejudice in denying plaintiff Lane the right to register at the general election of 1934, then you will be justified in awarding punitive damages in an amount not exceeding \$5,000.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to
Alfred Murrah,
U. S. District Judge.

(Filed in open Court April 20, 1937.)

Whereupon, the jury was excused and the court heard extended argument from both counsel for the defendants and from counsel for the plaintiff, and after consideration of said motion by defendants for an instructed verdict in their favor, and request by plaintiff for instructions to the jury, as well as argument of respective counsel, the court announced in open court that it was ready to rule thereupon and to render its opinion; whereupon, Mr. Chandler, counsel for plaintiff, moved the court to cause its decision to be reduced to writing and incorporated into the record therein, for the purpose of further objecting to said opinion and of saving exceptions thereto, and said request being granted, the court delivered its opinion, as follows:

Opinion of Trial Court.

The Court is of the opinion in this case that plaintiff, having brought a suit for damages against the defendants and each of them, and that said petition or suit is founded in their official acts as registration officials of the county of Wagoner, Oklahoma. They allege, in substance, that these officials conspired together, among each other, secretly and otherwise, to prevent the plaintiff and others from their suffrage rights. They invoke Section 5654, Art. 3, Chap. 29 of the laws of Oklahoma, 1931. The plaintiff states in his petition that said statute is invalid and unconstitutional because the same is repugnant to the Fourteenth and Fifteenth amendments to the Constitution of the United State and is therefore inoperative, and seeks to recover damages by reason of the violation of a right granted to the plaintiff by the Fourteenth and Fifteenth amendments to the Constitution of the United States.

Now they raise the question, and the sole question pertinent to the determination of the issues in this case, whether Section 5654, Compiled Statutes 1931, is a valid statute and constitutional under the Fourteenth and Fifteenth Amendments to the Constitution of the United States, and counsel relies on, throughout, the doctrine announced in the Guinn case and the case of Meyers vs. Anderson.

The Court has very carefully considered these two cases and is of the opinion that the doctrine in these cases is sound and undoubtedly is the law of the land, but Section 5654, Compiled Statutes, 1931, is not in conflict with the doctrine announced in these cases. And in arriving at that conclusion the Court considers that, as announced in that case, the right of the State to set its standards for suffrage rights are undisputed and undenied, so long as they do not violate the Fourteenth and Fifteenth Amendments. The Court, in very strong language, states that the suffrage right and the standards for suffrage rights is undisputed and undenied and a right within the sovereign rights of the various states, and in that decision it is stated:

"We are of opinion that neither forms of classification nor methods of enumeration should be made the basis of striking down a provision which was independently legal and therefore was lawfully enacted because of the removal of an illegal provision which the legal pro-

vision or provisions may have been associated. We state what we hold to be the rule thus strongly because we are of the opinion that on a subject like the one under consideration involving the establishment of a right whose exercise lies at the very basis of government a much more exacting standard is required than would ordinarily obtain where the influence of the declared unconstitutionality of one provision of a statute upon another and constitutional provision is required to be fixed."

That brings us to this question—the Court must, under the law, established rule and doctrine, presume the validity of the statute unless it is clearly shown to be invalid because of unconstitutionality or for other reason. The Court indulges in that theory and subscribes to that doctrine of law. The Court is called upon to say that this statute is unconstitutional because it revitalizes the Grandfather Clause of the Constitution, which was, by the decision in *Guinn vs. United States*, declared unconstitutional.

And the Court has examined very carefully the provisions of the 1916 act in the light of the defects and unconstitutionality of the Grandfather Clause of the Constitution of the State of Oklahoma. And the Court is of the opinion that this act, which provides that it shall be the duty of the precinct registrar to register each qualified elector of his precinct who makes application between the 30th day of April and the 16th day of May, 1916, provided such person applying shall, at the time he applies to register, be a qualified elector in said precinct and who shall comply with the provisions of this act and it shall be the duty of every qualified elector to register within such time. And making provision for the registration of absentees; further making provisions for the right of appeal in the event that, for any reason, the right to register is denied him, arbitrarily or otherwise, and the State itself setting up its own machinery by which it shall govern its suffrage right, and giving the right of appeal, without regard to race, color or previous condition of servitude.

For this Court to say that the clause in the Fifteenth Amendment relating to race, color or previous condition of servitude was in the mind of the Legislature at the time this act was enacted and with the implied desire to circumvent the 14th and 15th amendments to the Constitution, would be

going further than this Court feels it should go. And that is what the Court would have to say under statement of counsel for plaintiff.

It is stated in this *Myers vs. Anderson* case, and in the *Guinn* case chief Justice White in delivering the opinion of the Court stated that if no other logical conclusion could be drawn, then the Court would imply that the Grandfather Clause was enacted specifically for the purpose of discriminating against the colored race, and it was for that reason and on that grounds, if the Court understands them, that grounds alone, that Justice White declared the Grandfather Clause unconstitutional.

In other words, there was no other logical conclusion to be drawn. Now after 1916, after this decision, it became necessary for the Legislature to enact a registration law. We would say they did. If not, people could vote indiscriminately. So it became the duty of the Governor and the Legislature and the law-making bodies of the State to enact a registration law.

Now then, to say that because the people who had voted in 1914 didn't have to register under the 1916 act, extended a privilege to that particular class of people over other citizens, electors, who didn't vote in 1914, would amount to a violation of the privileges and immunities granted under the 14th Amendment, and the race and color clause of the Fifteenth Amendment to the Constitution, is just further than this Court can go.

Call the jury.

Instruction of Verdict for Defendants.

And the jury being recalled, the Honorable Trial Judge instructed said jury to return a verdict for and in behalf of defendants in said cause. And said jury, being so instructed by the court, returned, and filed in open court the verdict, in the following words and figures, (omitting caption, to wit):

Verdict of Jury.

Verdict—"We, the jury in the above-entitled cause duly empaneled and sworn, upon our oaths, find the issues in favor of the defendants and against the plaintiff. (Signed) J. J. Ammons, Foreman."

Filed in open Court April 20, 1937.

To which verdict the plaintiff excepted, and exceptions were allowed him.

Plaintiff's Motion for New Trial.

Thereafter, and on April 23, 1937, the plaintiff, I. W. Lane, filed and presented to the court his motion for a new trial which was, omitting caption, in the following words and figures, to wit:

(Caption omitted.)

Motion for New Trial.

The above-named plaintiff, I. W. Lane, respectfully prays this Honorable Court to vacate and set aside the order of said court, made on the 20th day of April, 1937, whereby the trial of said cause was taken from the jury and a verdict adverse to plaintiff was ordered and directed by the court; to set aside said adverse verdict and the order of the court thereon, and to grant said plaintiff a new trial herein. Plaintiff alleges and shows the following grounds and reasons in the premises, to wit:

1. During the trial of said cause the Honorable Trial Judge committed errors of law, prejudicial to the rights of said plaintiff, to which plaintiff did then and there object and except.

2. During the trial of said cause it was established, and not controverted, that in Wagoner County, Oklahoma, where of a total population of 22,428 inhabitants 6753 were Negroes (U. S. Official Census, 1930), during the 20 years next preceeding trial of this cause the officials of the State of Oklahoma, administering the 1916 Registration Laws of said State (O. S. 1931, Sec. 5654), permitted only TWO Negro citizens of the United States to register and qualify as electors, although many Negro citizens of the United States, including plaintiff Lane, residing in said County were duly qualified otherwise. This clearly established an abridgment and denial of the right to vote, on account of race and color; and also a violation of the 15th Article on Amendment to the Constitution of the United States. And the trial court erred in holding and instructing the jury that said Registration laws were valid and not unconstitutional, to which plaintiff objected and excepted.

3. It appearing from the face of the Oklahoma Registration laws of 1936 (O. S. 1931, Sec. 5654) that said law is an attempted revitalization of the illegal grandfather clause, Art. III, Sec. 4a, Oklahoma Constitution, Sec. 13450, O. S. 1931; or the same invalid law in a new disguise of words, and having the same discriminatory and unconstitutional intent, operation, and effect, being violative of the 15th amendment to the Constitution of the United States, the Honorable Trial Court erred in holding and adjudging, and in instructing the jury in said cause that said laws were and are valid and not unconstitutional, to which plaintiff duly objected and excepted.

* 4. The said Registration Laws of the State of Oklahoma, (O. S. 1931, Sec. 5654), as made and enforced by the State, abridges the privileges and immunities of plaintiff Lane and of other citizens of the United States of his color and similarly situated, deprives them of liberty and property without due process of law, and denies them the equal protection of the laws; said Registration Laws are violative of the 14th Article of Amendment to the Constitution of the United States. The trial court erred in holding, adjudging and in instructing the jury that said laws were valid and not violative of the said 14th Amendment.

5. It appearing that there was abundant evidence to establish that the plaintiff Lane was duly qualified to be registered and to vote as an elector in said State at the times in question, and that the defendants had, acting jointly and severally, wrongfully prevented his registering or voting, the cause should have been submitted to the jury under proper instructions from the court; and in refusing so to submit said cause to the jury with proper instructions, the trial court committed error prejudicial to the rights of plaintiff, to all of which plaintiff then and there saved exceptions.

Wherefore, said plaintiff, I. W. Lane, respectfully prays this Honorable Court to vacate and set aside said order, verdict and judgment rendered and made in said cause, and to allow said plaintiff a new trial herein.

Dated this 23rd day of April, 1937.

I. W. Lane, Plaintiff,
By Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Filed: April 23, 1937.

Order of Court Overruling and Denying Motion for
New Trial.

And on the 9th day of June, 1937, the aforementioned motion of plaintiff for new trial came on for hearing in open court, the respective parties being present by their respective counsel, and the court having considered said motion for new trial, denied same, and made and entered order to said effect, in the following words and figures, to wit:

“And the plaintiff having filed his motion for a new trial, which motion came on for hearing on this 9th day of June, 1937, a day in term time of this court, the parties appearing by their respective attorneys of record, and the court being duly advised,

“It is, on this 9th day of June, 1937 ordered, adjudged and decreed that the plaintiff's motion for new trial be and the same is hereby overruled, to which the plaintiff excepts, and exceptions are allowed him.”

Said order of court overruling motion of plaintiff for new trial, is incorporated in Journal Entry in said cause filed on the 9th day of June, 1937.

“Plaintiff's Exhibit No. 1.”

State of Oklahoma,
County of Wagoner, ss.

Before Jess Wilson, County Registrar, Wagoner County,
State of Oklahoma: Proceedings had on application to
strike certain names from the registration records of
said county: November 2nd, 1934.

(Index omitted.)

(1)

State of Oklahoma,
County of Wagoner, ss.

Before J. Wilson, County Registrar, said county and State:

Now comes John S. Moss and Frank J. Young and John L. Baldridge, electors of Wagoner County, State of Oklahoma, and respectfully represent to the County Registrar of Wagoner County, that they have reason to believe that the

names attached hereto appearing upon the County Registration Book as registered voters in precinct No. 2, Gatesville Township, are illegally registered in the County Registration Book of Wagoner County, Oklahoma, and for reason for said belief, say:

That the persons so registered in the Precinct Registration Book by Mose Walker, Registrar, did not voluntarily appear in person for registration before the said Mose Walker; that such persons whose names are hereto attached appearing as having been registered in said precinct were not eligible to registration on the date shown by the duplicate registration certificate in that they did not become qualified electors of said precinct between the 13th day of July, 1934, a registration period and the general election period beginning October 17th, 1934, and ending October 26, 1934; that the said registrar did not qualify said persons and made no effort to determine whether such persons were eligible to registration.

Wherefore, the undersigned applicants hereby apply in writing to the County Registrar of Wagoner County, to have all names hereto attached and registered by the said Mose Walker stricken from the County Registration Book kept by the County Clerk of Wagoner County, Oklahoma.

John S. Moss,
Frank J. Young,
John L. Baldridge.

(2)

State of Oklahoma,
County of Wagoner, ss.

Personally appeared before me, the undersigned Notary Public, John S. Moss and Frank J. Young and John L. Baldridge, who after being duly sworn, on oath say: That they have read the above and foregoing application, know the contents thereof and that all matters and things set out therein are true to the best of their knowledge and belief.

Witness my hand and seal of office at Wagoner, this the 29th day of October, 1934.

Laura Cantrell, Notary Public.

My commission expires Jan. 17, 1937. (Seal)

Names of Registered Persons Referred to in Attached Application.

David Jackson, A. F. Herndon, S. T. James, Jr., James Moses, Tom White, Oliver Davidson, Sumner Vann, E. W. Jackson, Boyce Littlejohn, George Martin, John Robinett, Willie Fisher, D. M. Maxwell, Lindsey Smith, W. M. Walker, George Marshall, William Savage, Emmett Lowery, Joe Smith, T. H. Curtis, N. A. Manuel, Virgie Savage, E. W. Jackson, Jr., Walter H. Davis, Chas. Wensett, Minnie Wensett, E. T. Smith, Lora Smith, Hays Gregory, John Macombe, J. T. McBurnett, Ollie McBurnett, A. M. Marshall, Virgie Harvel, Maude Hardester, Troy Hardester, Alta Hardester, Mrs. Jess Thomas, Gertie Duggan, Bertie Olinger, Francis Cagle, Mrs. B. F. Harvell, Cecil McKee, Lester Parker, W. I. Williams, M. S. Barnes, Lorine Barnes.

(Endorsed on back)

(3)

Precinct 2

Gatesville Twp.

Filed

October 30, 1934.

J. Wilson

County Registrar.

(4)

Office of County Registrar Wagoner County, Oklahoma.

To David Jackson, A. F. Herndon, S. T. James, Jr., James Moses, Tom White, Oliver Davidson, Sumner Vann, E. W. Jackson, Boyce Littlejohn, George Martin, John Robinett, Willie Fisher, D. M. Maxwell, Lindsey Smith, W. M. Walker, George Marshall, William Savage, Emmett Lowery, Joe Smith, T. H. Curtis, N. A. Manuel, Virgie Savage, E. W. Jackson, Jr., Walter H. Davis, Chas. Wensett, Minnie Wensett, E. T. Smith, Lora Smith, Hays Gregory, John Macombe, J. T. McBurnett, Ollie McBurnett, A. M. Marshall, Virgil Harvel, Maude Hardester, Troy Hardester, Alta Hardester, Mrs. Jess Thomas, Gertie Duggan, Gertie Olinger, Francis Cagle, Mrs. B. F. Harvell, Cecil McKee, Lester Parks, W. I. Williams, M. S. Barnes, Greetings:

You are hereby notified that on the 30th day of October, 1934, John S. Moss and others applied in writing to the undersigned County Registrar of Wagoner County, Oklahoma, to have your name stricken from the County Registration Book, citing as reasons therefor that you were not eligible for reg-

istration in Precinct No. 2, Gatesville Township of Wagoner County, State of Oklahoma, in that you have not become a qualified elector during the period between the 13th day of July, 1934, and the General election registration period beginning October 17th, 1934, and ending October 26th, 1934, and that there were illegal and irregular acts committed by the Registrar of said Precinct.

You are therefore ordered to be and appear before me at the Court House in the city of Wagoner, Oklahoma, on Friday, November 2nd, 1934, at the hour of two o'clock p. m., and show cause why your name should not be stricken from the Registration Book as prayed for in said application supported by affidavit.

Witness my hand this 30th day of October, 1934.

J. Wilson,
County Registrar.

Filed 4:45 p. m. Nov. 1, 1934.

J. Wilson,
Co. Registrar.

(5)

Sheriff's Return.

State of Oklahoma,
Wagoner County, ss.

I received this notice at 2 o'clock p. m. on October 30th, and served the same on the persons named therein as protestants, between the hours of 2 o'clock p. m. October 30th, 1934, and 1 o'clock p. m. October 31, 1934, and in the manner following, to-wit:

David Jackson	A. F. Herndon	S. T. James, Jr.
James Moses	Tom White	Oliver Davidson
E. W. Jackson	Boyce Littlejohn	George Martin
Willie Fisher	D. M. Maxwell	Lindsey Smith
W. M. Walker	William Savage	Emmett Lowery
T. H. Curtis	N. A. Manuel	Virgia Savage
F. W. Jackson, Jr.	Walter H. Davis	Charles Wensett
E. T. Smith	Lora Smith	Ollie McBurnett
A. M. Marshall	Virgle Harvel	Troy Hardester
Mrs. Jess Thomas	Gertie Duggan	Bertie Olinger
Francis Cagle	Mrs. B. F. Harvel	Cecil McKeen
W. I. Williams	Mrs. Lorine Barnes	M. S. Barnes

and by delivering to each of them, personally, a full, true and complete copy of the within notice.

(6)

And

Sumner Vann	John Robinet	George Marshall
Joe Smith	Minnie Wensett	Hays Gregory
John Macombe	J. T. McBurnett	Maude Hardester
Alta Hardester	Lester Parker	

by leaving a full, true and complete copy of the within notice at the usual place of residence of each of them in my county, with a member of the family of each, over fifteen years of age.

Clay Flowers,

Clay Flowers, Sheriff,

By Connie Murphy, Deputy.

Filed 4:45 p.m., No. 1, 1934.

J. Wilson, Co. Registrar.

(7)

State of Oklahoma,
County of Wagoner, ss.

Before J. Wilson, County Registrar, Said County and State:

Now comes John S. Moss and Frank J. Young and John L. Baldridge, electors of Wagoner County, State of Oklahoma, and respectfully represent to the County Registrar of Wagoner County, that they have reason to believe that the names attached hereto appearing upon the County Registration Book as registered voters in precinct No. 1, Creek Township, are illegally registered in the County Registration Book of Wagoner County, Oklahoma and for reason for said belief, say:

That George N. Goddard, whose name appears on certificates of registration is not a legally qualified elector in said precinct and could not legally act as Registrar of said Precinct; that the persons so registered by the said George N. Goddard did not apply to the said George N. Goddard, in person, for registration; that such persons so named were not eligible to registration on the 25th day of October, 1934 in that they did not become qualified electors of said precinct between the 13th day of July, 1934 and the general election date, October 17 to October 26, 1934; that the said purported

registrar did not qualify said persons and made no effort to determine whether such persons were eligible to registration.

Wherefore, the undersigned applicants hereby apply in writing to the County Registrar of Wagoner County to have all names hereto attached and registered by the said George N. Goddard stricken from the County Registration Book kept by the County Clerk of Wagoner County, Oklahoma.

John S. Moss,
Frank J. Young,
John L. Baldridge.

(8)

State of Oklahoma,
County of Wagoner, ss.

Personally appeared before me, the undersigned Notary Public, John S. Moss and Frank J. Young and John L. Baldridge, who after being duly sworn, on oath, say: That they have read the above and foregoing application, know the contents thereof and that all matters and things set out therein are true to the best of their knowledge and belief.

Witness my hand and seal of office at Wagoner, this the 29th day of October, 1934.

Laura Cottrell, Notary Public.

My commission expires Jan. 17, 1937. (Seal)

Names of Registered Persons Referred to in Attached Application.

Matt Williams, Louis Jonas, Winnie Jonas, Louise Jonas, Lois Ted Jonas, W. M. Mardon, Betty Taylor, Jim Badgett, Lester Anderson, Sam Gage, Lizzie Baggett, Emma Harrison, L. J. Robinson, Willie Lane, Wilma Jackson, Mose Jackson, Clementine Jackson, Verneice Jackson, Carrie Gage, Ira Williams, Aggie Williams, Janey Robinson, Cade Robinson, Rhoda Robinson, Hallie Anderson, Decader Robinson, William Markham, Mrs. Atley Hood, Atley Hood.

(Endorsed on back)

Precinct 1. Creek Township.

Filed October 30, 1934.

J. Wilson, County Registrar.

(9)

Office of County Registrar, Wagoner County, Oklahoma.

To: Matt Williams, Louis Jonas, Winnie Jonas, Louis Jonas, Lois Ted Jonas, W. M. Mardon, Betty Taylor, Jim Baggett, Lester Anderson, Sam Gage, Lizzie Bagett, Emma Harrison, L. J. Robinson, Willie Lane, Wilma Jackson, Mose Jackson, Clementine Jackson, Verneice Jackson, Carrie Gage, Ira Williams, Aggie Williams, Janey Robinson, Cade Robinson, Rhoda Robinson, Hallie Anderson, Deeder Robinson, William Markham, Mrs. Atley Hood, Atley Hood; Greeting:

You are hereby notified that on the 30th day of October, 1934, John S. Moss and others applied in writing to the undersigned County Registrar of Wagoner County, Oklahoma, to have your name stricken from the County Registration Book, citing as reasons therefor that you were not eligible for registration in Precinct No. 1, Greek Township of Wagoner County, State of Oklahoma, in that you have not become a qualified elector during the period between the 13th day of July, 1934, and the general election Registration period beginning October 17th, 1934 and ending October 26th, 1934, and that there were illegal and irregular acts committed by the Registrar of said precinct.

You are therefore ordered to be and appear before me at the Court House in the City of Wagoner, Oklahoma, on Friday, November 2, 1934, at the hour of two o'clock p. m., and show cause why your name should not be stricken from the Registration Book as prayed for in said application supported by affidavit.

Witness my hand this 30th day of October, 1934.

J. Wilson,
County Registrar.

Filed 4:45 p. m., Nov. 1, 1934,
J. Wilson, Co. Registrar.

(10)

Sheriff's Return.

State of Oklahoma,
Wagoner County, ss.

I received this notice at 5 o'clock p. m. on October 30th, and served the same on the persons named therein as protestants, between the hours of 5 p. m. o'clock October 30th, 1934,

and 1 o'clock p. m., October 31st, 1934, and in the manner following, to-wit:

Matt Williams	Louis Jonas	Winne Jonas
Louise Jonas	Lois Ted Jones	W. M. Mardon
Lester Anderson	Sam Gage,	Lizzie Bagett
Emma Harrison	L. J. Robinson	Willie Lane,
Wilma Jackson	Mose Jackson	Clementine Jackson,
Verneice Jackson	Carrie Gage	Ira Williams
Aggie Williams	Janey Robinson	Rhoda Robinson
Hallie Anderson	Atley Hood	Mrs. Atley Hood

by delivering to each of them, personally, a full, true and complete copy of the within notice.

And

Betty Taylor	Jim Bagett	Deeader Robinson
William Markham	Mose Jackson	

by leaving a full, true and complete copy of the within notice at the usual place of residence of each of them in my county, with a member of the family of each, over fifteen years of age.

Clay Flowers,
Clay Flowers, Sheriff,
By J. Beard, Deputy.

(Endorsed)

Filed 4:45 p. m., Nov. 1, 1934.

J. Wilson, Co. Registrar.

(11)

Wagoner County,
State of Oklahoma, ss.

Proceedings had and done at Wagoner, Wagoner County, Oklahoma, on the 2nd day of November, 1934, before Mr. Jess Wilson, County Registrar of Wagoner County, Oklahoma: Said hearing being had upon hearing application to strike certain registration certificates from the records of the County Clerk of Wagoner County, Oklahoma:

By Mr. Wilson: How many of these clients do you have here.

Mr. Chandler: Now are you ready to commence.

Mr. Wilson: Yes.

Mr. Chandler: I want the record to show that I, Charles A. Chandler and Cecil E. Robertson, appear here on behalf of these electors named in the affidavit as residing in Precinct Number One, Creek Township, Wagoner County, Oklahoma, and especially on behalf of Louis Jonas, Winnie Jonas, Louise Jonas, Lois Ted Jonas, Wilma Jackson, Mose Jackson, Clementine Jackson, Verneice Jackson, Carrie Gage, Ira Williams, Aggie Williams, Janey Robinson, Cade Robinson, Rhoda Robinson, Hallie Anderson, Decater Robinson, William Markham, and we appear specially for the sole purpose of objecting to this hearing and procedure for the following reasons, to-wit: First, that Jess Wilson, County Registrar, is disqualified to conduct or entertain this hearing for the reason or by reason of his being a defendant in a suit filed on or about October 26th in the United States District Court for the Eastern District of Oklahoma, where one Lane is plaintiff and said Jess Wilson, one John Moss and Marion Parks are defendants; For the further reason that said County Registrar has no jurisdiction in said matter; for the further reason no proper or legal notice has been served, given or proven as required by law, and for the further that the petition and affidavit upon which this procedure is being had is insufficient in law; and for the further reason that the Statutes under which this procedure is had violates the 14th Amendment and the 15th Amendment to the Constitution of the United States, violates the laws enacted pursuant thereto, and also violates Section Six of Article One of the Constitution of Oklahoma. And for the following reason, that the proceeding is not being had or entertained in good faith. That is all.

Mr. John Moss: Is that all you appear for, for that reason.

Mr. Chandler: Yes.

Mr. John Moss: Then you might excuse all of us and hear it.

Mr. Wilson: How many of your defendants are there here.

Mr. Chandler: Of those I have just named.

Mr. Wilson: Yes.

Mr. Chandler: I don't know.

Mr. Wilson: All right. We will excuse you gentlemen

and call Mat Williams.—You gentlemen are excused along with Judge Moss.

Mr. Chandler: No sir: I wish to insist upon being present at this hearing on these people I have just named, as their attorney.

Mr. Wilson: We will not accept any cross examination, it is just merely to thrash it out to see whether they are legal voters, legally registered. We could go ahead with cross examination and prolong it for two weeks, but there is no necessity for that, just to see if the precinct registrar has carried out his acts as he should.

(13)

Mr. Chandler: You understand there is nothing personal about this. I just insist upon representing these people, and if you insist upon me not being here I wish to make that a matter of record and object to that procedure.

Mr. Wilson: I don't see why they should have legal advice on the questions we intend to ask them.

Mr. Chandler: It is my position that citizens of Oklahoma and of the United States have a right to be represented by counsel in any matter or hearing wherein their property or political rights are involved, and, of course, it is up to the Court or the Registrar to exclude counsel, but it will be over my protest, and then, of course, I will save my exceptions. I will ask you to rule on that.

Mr. Wilson: Well, I am going to exclude you.

Mr. Chandler: To which I save an exception on behalf of these we represent, and on behalf of all of the electors of these precincts. These I just mentioned. Will you allow me an exception to that ruling.

Mr. Wilson: You can go on out.

Mr. Chandler: Will you allow me an exception.

Mr. Wilson: Exception to what,

Mr. Chandler: To the objection I have just made, and I further ask the County Registrar for leave to have this entire proceeding reported by Earl Goad who is a Court Reporter in this County.

Mr. Wilson: Who have you got, Connie.

Mr. Chandler: Will you rule on that.

Mr. Wilson: Why yes, that is all right, but we don't need you in here, I don't think.

Mr. Chandler: All right, thanks.

(14)

Whereupon: Jim Bagett, being first duly sworn by the County Registrar to testify to the truth, the whole truth and nothing but the truth in said matter, is examined and testified as follows, to-wit:

(Further proceedings, as shown in transcript, omitted herefrom.)

Plaintiff's "Exhibit No. 3".

Summary of ages of electors registered in Gatesville election Precinct No. 1, of Wagoner County, State of Oklahoma, during registration period of 1934, as shown by the registration record of Wagoner County, Oklahoma, introduced in evidence by plaintiff on trial:

Age of Electors	No. of Electors
21 yrs.	18
22 yrs.	18
23 yrs.	8
24 yrs.	7
25 yrs. to 29 yrs., both inclusive	23
30 yrs. to 34 yrs., both inclusive	18
35 yrs. to 39 yrs., both inclusive	14
40 yrs. to 44 yrs., both inclusive	15
45 yrs. to 49 yrs., both inclusive	9
50 yrs. to 59 yrs., both inclusive	10
60 yrs. and over	9
Total	149

The foregoing Bill of Exceptions contains all the material evidence offered and received on the trial of said cause, including all rulings made during the course of said trial which were excepted to by each of the parties, and all exceptions allowed by the court.

CHARLES A. CHANDLER,
Attorney for Plaintiff.

Notice of Filing Bill of Exceptions
and

Notice of Hearing on Settlement of Bill.

To the Defendants, Jess Wilson, John Moss, and Marion Parks; and Joseph C. Stone and Watts and Watts, Esquires, attorneys for said defendants.

You will please take notice that the plaintiff, I. W. Lane, in the above-entitled action, filed in the office of the Clerk of the District Court for the Eastern District of Oklahoma, on the 2nd day of September, 1937, his proposed Bill of Exceptions in said cause; that a copy of said Bill of Exceptions, with a copy of said notice, is herewith served upon you.

And please take further notice that said plaintiff, I. W. Lane, will bring on for settlement his proposed Bill of exceptions herein, here-in-above mentioned, at the Court Room of the United States District Court for the Eastern District of Oklahoma, in the Federal Building in the City of Muskogee, Oklahoma, on the seventh (7th) day of September, 1937, at the hour of Nine (9) o'clock a.m., or as soon thereafter as counsel can be heard.

Dated this 2nd day of September, 1937.

CHARLES A. CHANDLER,
Attorney for Plaintiff, Lane.

Acknowledgment of Service of Proposed Bill of Exceptions,
and of Notice of Filing and of Settling of Same.

The defendants, Jess Wilson, John Moss, and Marion Parks, by their attorney of record herein, hereby acknowledge service upon them of the foregoing proposed Bill of Exceptions, and of the foregoing notice of filing and of settling of same; and also of receipt of copies thereof.

Dated this 2nd day of September, 1937.

JOS. C. STONE,
Attorney for Defendants.

(Caption omitted.)

Stipulation for Settling Bill of Exceptions

Come now, I. W. Lane, plaintiff, by Charles A. Chandler, his attorney of record herein, and the defendants, Jess Wil-

son, John Moss and Marion Parks, by Joseph C. Stone, and Chas. G. Watts & Gordon Watts, their attorney of record, and agree and stipulate that the above and foregoing Bill of Exceptions, filed in the above-named court on the second day of September, 1937, contains all of the material evidence given and proceedings had upon the trial of this action and is in all respects correct; and said parties do further agree and stipulate that, without further notice to either of them, same may be approved, allowed, and settled by the trial judge, and made part of the record herein.

Dated this 8th day of September, 1937.

CHARLES A. CHANDLER,
Attorney for Plaintiff.

JOSEPH C. STONE,
CHAS. G. WATTS,
GORDON WATTS,
Attorneys for Defendants, Jess Wil-
son, John Moss, and Marion Parks.

Filed Sep. 8, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order Approving, Allowing, and Settling Bill of Exceptions.

The foregoing Bill of Exceptions was filed with the Clerk of this Court on the Second Day of September, 1937, within the time for the filing of said Bill; and the same contains all of the material evidence given and proceedings had upon the trial of this action, and is in all respects correct, and same is hereby approved, allowed, and settled and made part of the record herein.

Dated this 8th day of September, 1937.

ALFRED P. MURRAH,
United States District Judge.

Filed Sep. 8, 1937. W. V. McClure, Clerk.

Filed Sep. 2, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Petition for Appeal.

To the Honorable Alfred P. Murrah, United States District Judge, and Judge of the trial of the above cause:

I. W. Lane, plaintiff in the above-entitled and numbered cause, respectfully shows that at the trial thereof this court instructed and directed the trial jury therein to render and return a verdict finding the issues in favor of the defendants, Jess Wilson, John Moss, and Marion Parks, and against this plaintiff; and that pursuant to said instruction and direction of the court said jury did return and render such verdict which was on the 20th day of April, A. D. 1937, duly filed in open court during the trial of said cause; to all of which this plaintiff duly objected and saved exceptions.

That on the 9th day of June, A. D. 1937, and in pursuance of the aforementioned verdict, ordered, instructed, returned, rendered, and filed as aforesaid, this court rendered and entered an order and judgment in favor of the aforementioned defendants and against this plaintiff, and dismissing, with prejudice, the petition of plaintiff herein, to all of which this plaintiff duly objected and excepted.

Further, that on the 23rd day of April, A. D. 1937, and within three days after the aforementioned adverse verdict was instructed, returned, rendered and filed, this plaintiff duly filed in said cause and submitted to the court herein his written motion for new trial, on account of the alleged errors therein specified and assigned; and that said motion for new trial came on for hearing in open court on the 9th day of June, 1937, at which time this court overruled and denied said motion for new trial and entered its order and judgment to said effect; to all of which this plaintiff objected and excepted, and saved exceptions.

That the afore-mentioned verdict, judgment, and order of the court denying motion for new trial have become final. That prior to the act of the Congress of the United States, of January 31, 1928, (Ch. 14, 45 Stat., 54) as amended by the act of April 26, 1928 (Ch. 440, 45 Stat., 466), said verdict and said judgment and order of this court would be reviewable upon Writ of Error, by the United States Circuit Court of Appeals, for the proper Circuit.

That said plaintiff, I. W. Lane, feeling himself aggrieved by the aforementioned adverse verdict, and act and order of

this court directing and instructing same, by the judgment of this court and by its order denying plaintiff new trial, as well as by the alleged errors committed during the trial of this cause, comes now by his attorney, Charles A. Chandler, and gives notice that he does appeal from said verdict, judgment, and orders of this court, to the United States Circuit Court of Appeals for the Tenth Circuit; and said plaintiff respectfully petitions this court for an order allowing said appeal to said Circuit Court of Appeals, by this plaintiff as appellant, under and according to the laws of the United States and the Rules of Court made and provided.

And said plaintiff, in connection with this petition for appeal, respectfully submits herewith his assignment of errors, setting forth separately and particularly each error asserted and intended to be urged upon said appeal; and said plaintiff further submits herewith his Cost Bond on Appeal conditioned according to law.

Wherefore, This Petitioner Respectfully Prays that this Honorable court allow his appeal to said United States Circuit Court of Appeals for the Tenth Circuit, and make order to said effect, fixing the amount of security for costs which the plaintiff shall give upon said appeal; and that the court approve the Appeal Bond herewith submitted; further, that this court sign and issue citation upon and to the defendants herein, to wit: Jess Wilson, John Moss, and Marion Parks.

And said plaintiff further prays that this court by its order allowing an appeal herein, to extend the time for thirty days from this date within which to prepare, settle and file Bill of Exceptions; and that this court reserve jurisdiction of this cause for the purpose of settling and filing herein said bill of exceptions.

Dated this 9th day of June A. D. 1937.

I. W. LANE,

Petitioner—Plaintiff.

By CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Petitioner.

Filed in open court Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Assignment of Errors and Prayer for Reversal.

Now comes the above-named plaintiff, I. W. Lane, and files and makes the following assignment of errors upon which he will rely in the prosecution of appeal in the above-entitled and numbered cause, from the verdict rendered therein on the 20th day of April, A. D. 1937; from the judgment rendered therein on the 9th day of June A. D. 1937, and from the order therein rendered on the 9th day of June, A. D. 1937, denying and refusing plaintiff a new trial, to wit:

I.

During the trial of said cause the Honorable trial Judge committed errors of law, prejudicial to the rights of said plaintiff, to which plaintiff did then and there except.

II.

During the trial of said cause it was established and not controverted, that in Wagoner County, Oklahoma, where of a total population of 22,428 inhabitants 6753 were Negroes (U. S. Official Census, 1930), during the 20 years next preceeding trial of this cause the officials of the State of Oklahoma, administering the 1916 Registration Laws of the State (O. S. 1931, Sec. 5654), permitted only TWO Negro citizens of the United States to register and qualify as electors, although many Negro citizens of the United States, including plaintiff, Lane, residing in said county were duly qualified otherwise. This clearly established an abridgment and denial of the right to vote, on account of race and color; and also a violation of the 15th Article of Amendment to the Constitution of the United States; and the trial court erred in holding and instructing the jury in said cause that said Registration Laws were valid and not unconstitutional, to all of which plaintiff duly objected and excepted.

III.

It appearing from the face of the Oklahoma Registration Laws of 1916 (O. S., 1931, Sec. 5654) that said law is an attempted revitalization of the illegal Grandfather Clause, Art. III, Sec. 4a, Oklahoma Constitution, Sec. 13450, O. S. 1931; or the same invalid law in a new disguise of words, and having the same discriminatory and unconstitutional intent, op-

eration, and effect, being violative of the 15th Article of Amendment to the Constitution of the United States, the Honorable trial court erred in holding and adjudging, and in instructing the jury in said cause that said laws were and are valid and not unconstitutional, to which plaintiff duly objected and excepted.

IV.

The said Registration Laws of the State of Oklahoma (O. S. 1931, Sec. 5654), as made and enforced by the State, abridge the privileges and immunities of plaintiff Lane and of other citizens of the United States of his color and similarly situated, deprives them of liberty and property without due process of law, and denies them the equal protection of the laws; said Registration Laws are violative of the 14th Article of Amendment to the Constitution of the United States. The trial court erred in holding, adjudging, and in instructing the jury upon the trial of said cause that said laws were valid and not violative of the said 14th Amendment.

V.

It appearing that there was abundant evidence to establish that the plaintiff Lane was duly qualified to be registered and to vote as an elector in said State and Wagoner County at the times in question; and that the defendants had, acting jointly and severally, wrongfully prevented his registering or voting, the cause should have been submitted to the jury under proper instructions from the court; and in refusing so to submit said cause to the jury with proper instructions, the trial court committed an error prejudicial to the rights of plaintiff, to all of which plaintiff objected and excepted and saved exceptions.

VI.

It being established by the evidence that the plaintiff Lane was duly qualified as an elector of Wagoner County, Oklahoma; and that he made due and proper application to the defendant, Marion Parks, precinct Registrar, for registration at a time when said Lane was entitled to be registered as an elector; and that the defendant Parks refused and prevented said Lane's registration, for the sole reason that he was a Negro, said Parks acting under the color of a state custom, practice, and statute, plaintiff Lane was legally en-

titled to have his cause submitted to the jury; and the trial court erred in instructing the jury to render and return a verdict for the defendants and against said plaintiff; to all of which plaintiff objected and excepted.

VII.

There being adduced upon trial abundant evidence to establish that the defendants, Jess Wilson, John Moss, and Marion Parks, in denying to plaintiff Lane the right to register as an elector of Wagoner County, Oklahoma, and in consequently denying him the right to vote as an elector of said county and as a citizen of the United States, were acting conjointly and pursuant to an agreement and understanding to accomplish a result violative of the laws of the United States, the trial court erred in refusing to instruct the jury on the question and issue of conspiracy, as requested by the plaintiff; and in this the court erred, to which the plaintiff objected and excepted.

VIII.

The trial court erred in refusing to give to the jury the several instructions requested by the plaintiff; and to this the plaintiff objected and saved exceptions.

IX.

There being adduced upon trial abundant evidence to establish in favor of plaintiff every material issue in the case, the trial court erred as a matter of law in taking the case from the jury and in instructing a verdict in favor of the defendants and against the plaintiff; to which the plaintiff objected and excepted.

X.

The trial court committed an error of law in refusing to instruct the jury, as requested by the plaintiff, that Section 5654; O. S. 1931, in so far as it purported to deny to plaintiff Lane the right to register, was unconstitutional, null and void; and to this the plaintiff objected and saved exceptions.

XI.

The trial court erred in sustaining the motion of the defendants for an instructed verdict in their favor, when the evidence established in favor of plaintiff every material issue in the cause; and to this plaintiff objected and saved exceptions.

XII.

The verdict of the jury is not supported by any evidence adduced upon trial of the cause.

XIII.

The judgment of the court is not sustained by any evidence.

XIV.

The trial court erred in overruling and denying the motion of plaintiff for new trial, to which plaintiff objected and saved exceptions.

Wherefore, said plaintiff, I. W. Lane, respectfully prays that said verdict, judgment and orders of the trial court be reversed and that a new trial be ordered according to law; and plaintiff prays for such other, further, or additional relief as to the court may appear just and proper.

Dated this 9th day of June A. D. 1937.

I. W. LANE,

Plaintiff—Appellant.

By CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Plaintiff.

Filed in open court, Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Cost Bond Upon Appeal.

Know all Men by These Presents:

That we, I. W. Lane as principal, and the United States Fidelity and Guaranty Company, a Corporation of Maryland, as surety, are held and firmly bound unto Jess Wilson, John Moss, and Marion Parks in the full and just sum of Five Hundred Dollars (\$500.00), to be paid to the said Jess Wilson, John Moss, and Marion Parks, and to their heirs, executors, administrators, successors, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors, or assigns, jointly and severally by these presents. Sealed with our seals and dated this 8th day of June, A. D. 1937.

Whereas, lately at the term, A. D. 1937, of the District Court of the United States for the Eastern District of Oklahoma in a suit depending in said court between said I. W. Lane, plaintiff, and the aforesaid Jess Wilson, John Moss, and Marion Parks, defendants, judgment was rendered against said plaintiff, I. W. Lane; and the said I. W. Lane has petitioned said court for an appeal to reverse the said judgment in the aforesaid suit, and a citation directed to the said Jess Wilson, John Moss, and Marion Parks citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Tenth Circuit, at the City of Denver, Colorado, forty (40) days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said I. W. Lane shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of:

I. W. LANE, (Seal)
Principal,

THE UNITED STATES FIDELITY AND GUARANTY COMPANY, A CORPORATION,

By ORBAN WINDHAM, (Seal)
Its Attorney in Fact, Surety.

The above and foregoing bond is hereby approved in open court this 9th day of June, 1937.

ALFRED P. MURRAH,
U. S. District Judge.

Filed in open court, Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order Allowing Appeal.

On motion of Charles A. Chandler, counsel for the plaintiff, I. W. Lane, and upon consideration of this court of the

petition for appeal duly filed by said plaintiff in open court on this 9th day of June, A. D. 1937, at the same time of rendition of final judgment and of order denying his motion for new trial herein, in favor of said defendants and against said plaintiff, said plaintiff noting an exception to said judgment and order, and exceptions being allowed him; said petition of plaintiff for appeal is granted and allowed, and it is hereby in open court ordered, adjudged and decreed that an appeal be allowed and granted, to the United States Circuit Court of Appeals for the Tenth Circuit, from the final judgment, verdict, and from the order of this court denying plaintiff's motion for new trial; and it is further ordered, adjudged, and decreed that a certified transcript of the record, testimony, exhibits, stipulations, bill of exceptions, and of all proceedings in said cause in this court be forthwith transmitted to said United States Circuit Court of Appeals for the Tenth Circuit.

It is further ordered that the Assignment of Errors submitted with said petition for appeal be filed in this court and made a part of the proceedings herein; and that cost bond upon appeal be fixed in the sum of Five Hundred Dollars (\$500.00), and the bond submitted by said plaintiff in said sum is hereby approved:

Done in open court this 9th day of June, A. D. 1937.

ALFRED P. MURKIN,
U. S. District Judge.

Filed in open court, Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Citation.

United States of America,

To Jess Wilson, John Moss, and Marion Parks, Defendants, Greetings:

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Tenth Circuit, at the City of Denver, Colorado, forty (40) days from and after the day this citation bears date, pursuant to appeal from the District Court of the United States for the Eastern District of Oklahoma, wherein I.

W. Lane is appellant, and you are appellees, to show cause, if any there be why the verdict rendered and filed in the above entitled cause on April 20th, 1937, A. D., the judgment rendered in said cause in your favor in said cause on the 9th day of June, A. D. 1937, and why the order of said District Court of the United States for the Eastern District of Oklahoma denying to said appellant a new trial in said court, said verdict, judgment, and order being in your favor and against the said appellant, from which said appeal was allowed, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Alfred P. Murrah, judge of the United States District Court for the Eastern District of Oklahoma, this 9th day of June, A. D. 1937.

ALFRED P. MURRAH,
U. S. District Judge.

Acknowledgment of Service of Citation.

The undersigned hereby acknowledges service upon him of the above and foregoing Citation, said service being made in open court, as attorney for each of the defendants and appellees, to wit: Jess Wilson, John Moss, and Marion Parks; said service of citation being made on this 9th day of June, A. D. 1937.

CHAS. G. WATTS,
JOSEPH C. STONE,
Attorney of Record for the Defendants,
Jess Wilson, John Moss, and
Marion Parks.

(Caption omitted.)

Order Extending Time Within Which to Prepare, Settle and File Bill of Exceptions for Record Upon Appeal.

The application of the plaintiff herein below, appellant upon appeal, by Charles A. Chandler, as attorney, for an extension of forty-five (45) days time from this date for completing, settling and filing Bill of Exceptions upon appeal herein, being considered by the Court;

And it appearing to the Court that due diligence herein

has been exercised by said plaintiff and by his attorney, and that there should be herein an extension of forty-five (45) days time from this date within which said plaintiff and appellant shall be allowed and permitted to complete Bill of Exceptions for record upon appeal herein to the United States Circuit Court of Appeals for the Tenth Circuit;

Therefore, It is hereby ordered, adjudged, and decreed that the said plaintiff and appellant have an extension of forty-five (45) days from this date within which he shall be permitted to complete, settle, and file in the above entitled and numbered cause upon appeal, the Bill of Exceptions to be incorporated in the transcript of record for the appeal of said cause to the said United States Circuit Court of Appeals for the Tenth Circuit.

Dated this 28th day of June, 1937.

ALFRED P. MURRAH,
United States District Judge.

Filed Jun. 28, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Stipulation for Extension of Time Within Which to Prepare, Serve, and Settle Bill of Exceptions, to Docket Appeal, and to File Record and Transcript in C. C. A.

It is hereby agreed and stipulated by and between the parties hereto that the plaintiff in error, I. W. Lane, shall have an extension of thirty days time from and after the time heretofore allowed within which to prepare, serve, settle, and file Bill of Exceptions in the above entitled cause; and that said plaintiff may have an extension of time for thirty days from and after the time heretofore allowed within which to docket the above entitled and numbered cause upon appeal to said Circuit Court of Appeals and to file with the Clerk of said Circuit Court of Appeals of the Tenth Circuit, record and transcript upon appeal in said cause.

And said parties do further agree and stipulate that orders extending time as hereinabove mentioned may be made and signed by any United States District Judge.

Dated this 11th day of August, 1937.

I. W. LANE,

Appellant.

By CHARLES A. CHANDLER,
Counsel for Appellant.
CHAS. G. WATTS,
Counsel for Appellees.

Filed Aug. 11, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order for Extension of Time to Prepare, Settle, and File Bill of Exceptions; To Docket Appeal, and to File Record and Transcript on Appeal.

On this 11th day of August, 1937, there being presented to the court the stipulation of the parties herein, consenting for an extension of thirty (30) days from and after the respective periods therefor heretofore allowed for appellant, I. W. Lane, to prepare, serve, settle, and file Bill of Exceptions herein, and to lodge and docket appeal herein in the United States Circuit Court of Appeals for the Tenth Circuit, and to file therein transcript and record upon appeal; the court finds that order should be made accordingly.

Wherefore, it is hereby ordered that, said plaintiff, I. W. Lane be allowed and granted a further extension of thirty (30) days from and after the time heretofore allowed, within which, respectively, to prepare, settle, and file Bill of Exceptions upon appeal herein; and to lodge and docket said appeal in the United States Circuit Court of Appeals for the Tenth Circuit, and to file therein transcript and record upon appeal.

Dated this 11th day of August, 1937.

ALFRED P. MURRAH,
U. S. District Judge.

Filed Aug. 11, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order Extending Time to Docket Appeal.

On this 10th day of September, 1937, it appearing to the court that same is reasonably necessary, and that the appellant has exercised due diligence in the premises, and that it will be impossible within the time heretofore allowed, to dock-

et appeal herein in the United States Circuit Court of Appeals for the Tenth Circuit, or to have record therein printed and filed in said appellate Court;

Wherefore, It is hereby ordered, adjudged, and decreed that the time within which appellant herein shall be permitted to docket appeal herein in the said United States Circuit Court of Appeals, and to file and lodge record upon appeal in said court, shall be extended for Forty-five days (45 d.) from and after the time heretofore allowed.

Done in open court this 10th day of September, 1937.

ALFRED P. MURRAH,
U. S. Dist. Judge.

The parties hereto do hereby agree and stipulate for the entering of the afore order.

CHARLES A. CHANDLER,
Attorney for Appellant.

JOSEPH C. STONE,
Attorney for Appellees.

Filed Sep. 20, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order Extending Time to Docket Appeal.

Now on this 22nd day of October, 1937, it appearing to the Court that the time heretofore allowed for docketing the appeal in the above entitled cause in the United States Circuit Court of Appeals for the Tenth Circuit, and for lodging printed transcript of record therein, is insufficient,

It Is Hereby Ordered that the time within which said plaintiff shall be permitted to docket said appeal and to file transcript of record therein in the United States Circuit Court of Appeals for the Tenth Circuit shall be, and the same is hereby extended to and until the 10th day of November, 1937.

ALFRED P. MURRAH,
U. S. District Judge.

Filed Oct. 22, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Praecipe.

To the Clerk of the Afore-named Court:

You are hereby respectfully requested to make a Transcript of the Record to be filed in the United States Circuit Court of Appeals for the Tenth Circuit, pursuant to an appeal allowed in the above-entitled cause; and to include in such transcript of the record, the following papers and documents of record in your office, to wit:

1. Petition of Plaintiff, L. W. Lane.
2. Answer of Jess Wilson and Marion Parks.
3. Answer of John Moss.
4. Reply of Plaintiff to Answer of John Moss.
5. Reply of Plaintiff to answer of Jess Wilson and Marion Parks.
6. Verdict.
7. Order of the Court, dated April 20, 1937, instructing verdict for defendants. (Page 50 in Bill of Exceptions.)
8. Motion of Plaintiff, Lane, for new trial.
9. Journal Entry of Judgment, dated June 9, 1937.
10. Petition for Appeal.
11. Assignment of Errors.
12. Cost Bond on Appeal.
13. Order allowing appeal.
14. Citation, with proof of service thereof.
15. Order of June 28, 1937, Extending Time Forty-five Days to Docket Appeal.
16. Stipulation of August 11, 1937, for Extension of time to Settle Bill of Exceptions, and to Docket Appeal.
17. Order of August 11, 1937, for Extension of Time.
18. Bill of Exceptions filed in your office on Second (2nd) day of September, 1937, together With Stipulation and Order settling same, filed in your office on Eighth day of September, 1937, and attached to said Bill of Exceptions.
19. Order dated the 10 day of September, 1937, for extension of time for docketing appeal.

19A. Order extending time to docket appeal, dated October 22, 1937.

20. This Praecipe.

21. Certificate of the Court.

Said transcript to be prepared as required by the law, by the rules of this court, and by the rules of the United States Circuit Court of Appeals for the Tenth Circuit.

Dated this day of September, 1937.

CHARLES A. CHANDLER,

C. E. ROBERTSON

Attorneys for Appellant.

Service and Stipulation.

Service of the above praecipe is hereby accepted and acknowledged, and it is hereby agreed and stipulated that the matters set forth in the foregoing praecipe shall be the matters and things to be included therein, and to be included in the transcript of record.

Dated this day of September, 1937.

CHAS. G. WATTS,

GORDON WATTS,

JOSEPH C. STONE,

Attorneys for Appellees.

Filed Sep. 10, 1937. W. V. McClure, Clerk.

Certificate of Clerk.

United States of America,
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of I. W. Lane, Plaintiff, vs. Jess Wilson, Marion Parks, and John Moss, Defendants, No. 6353-Law, as was ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the citation attached hereto, and returned herewith, is the original citation issued in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Muskogee, this 4th day of November, A. D. 1937.

(Seal)

W. V. McCLURE, Clerk.



[fol. 93] IN UNITED STATES CIRCUIT COURT OF APPEALS,
TENTH CIRCUIT

ORDER OF SUBMISSION

Eleventh Day, January Term, Friday, January 21st, A. D. 1938. Before Honorable Robert E. Lewis and Honorable Sam G. Bratton, Circuit Judges.

This cause came on to be heard, Charles A. Chandler, Esquire, appearing for appellant, Joseph C. Stone, Esquire, appearing for appellees.

On motion, appellant was granted leave to file three type-written copies of a reply brief in this cause within fifteen days from this day.

Thereupon, pursuant to agreement of counsel, this cause was submitted to the court, consisting of the sitting judges and Honorable Orie L. Phillips, Circuit Judge, without oral argument.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SEPTEMBER
TERM, 1938

No. 1635

Charles A. Chandler, for appellant.

Gordon Wattes and Joseph C. Stone (Charles G. Watts was with them on the brief) for appellees.

Before Lewis, Phillips and Bratton, Circuit Judges

OPINION—September 19, 1938

LEWIS, Circuit Judge, delivered the opinion of the court:

Appellant, a negro man, brought this action against the three appellees to recover from them \$5,000, for that, as averred, they prevented his registration as an elector at the general election in November, 1934, because of his race and color. He was born in Alabama, but his residence has been in the village of Red Bird, Wagoner County, Oklahoma, since 1908 under claim of citizenship. He testified he voted in Oklahoma in 1910 and 1912, but did not vote thereafter because he did not register. He claims all the qualifications of an elector in Oklahoma (Oklahoma Constitution, Article

3, Section 1), and there is no denial of his right to vote if registered.

[fol. 94] The complaint is an attack on the Oklahoma statute providing for registration as a condition precedent to the right to vote. The act was passed in February, 1916. It is said that prior thereto Oklahoma had no requirements of registration throughout the state. Anticipating the election to be held on November 6, 1934, appellant on October 24, 1934, in company with several other negroes applied for registration to Marion Parks, registrar in appellant's voting precinct in Wagoner County, and was refused. Appellant testified that Parks told him he "was instructed by the higherups not to register any colored people"; that Parks stated the higherups were Jess Wilson, county registrar, and John Moss, county judge. Three days thereafter he filed this suit. At the conclusion of all the evidence each side moved for an instructed verdict, and the Court ruled in favor of appellees.

The registration provisions and requirements applicable here are found in Volume 1, Article 3, Chapter 29, Oklahoma Statutes 1931. It is referred to in the act itself as providing for a permanent record of all electors in the state, and it defines elections:

"to mean every general, primary, regular, or special election held in this state, or in any county, city, town, township, school district, or precinct for the nomination or election of federal, state, district, county, municipal, township, school district, or precinct officers, including United States Senators and members of Congress, and upon any issue submitted to the people of the State or any municipality or subdivision of the State."

Section 5652 is this:

"It shall be the duty of every qualified elector in this state to register as an elector under the provisions of this Act, and no elector shall be permitted to vote at any election unless he shall register as hereby provided, and no elector shall be permitted to vote in any primary election of any political party except of the political party of which his registration certificate shows him to be a member."

The next section (5653) provides that the Secretary of the State Senate shall within 60 days after the act becomes effec-

tive appoint one qualified elector in each county as county registrar, and the county registrar so appointed shall immediately appoint precinct registrars in each precinct within his county, who shall be a qualified elector and who shall be the official registration officer in his precinct. He is empowered to administer oaths and to exercise all the authority conferred upon precinct registrars by the act. County registrars hold office at the pleasure of the Secretary of the State Senate, and the precinct registrars hold office at the pleasure of the county registrars.

Section 5654 provides:

"It shall be the duty of the precinct registrar to register each qualified elector of his election precinct who makes application between the thirtieth day of April, 1916, and the eleventh day of May, 1916, and such person applying shall at the time he applies to register be a qualified elector in such precinct and he shall comply with the provisions of this act, and it shall be the duty of every qualified elector to register within such time; provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering with the precinct registrar within such time, he may register with such precinct registrar at any time after the tenth day of May, 1916, up to and including the thirtieth day of June, 1916, but the precinct registrar shall register no person under this provision unless he be satisfied that such person was absent from the county or was prevented from registering by sickness or unavoidable misfortune, as hereinbefore provided. And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state; and provided further, that wherever any elector is refused registration by any registration officer such action may be reviewed by the district court of the county by the aggrieved elector by his filing within ten days a petition with the Clerk of said court,

[fol. 96] whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the district court shall be an expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; and provided further, that the provisions of this act shall not apply to any school district elections. Provided further, that each county election board in this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote."

Section 5655 makes it the duty of the county registrar to furnish at the expense of the county the proper registration certificate books and supplies; provides how they shall be kept; that they shall be delivered to the registrar in each precinct who shall receipt for them, the receipts to be held at the office of the county registrar; provides how the registration books shall be marked, the form and contents of each registration certificate and duplicate of each certificate issued to be retained in said books after they are filled in by the precinct registrar with indelible pencil, the issued registration certificate to be signed by the precinct registrar.

Section 5657 provides in part:

"Each qualified elector in this State may be required to make oath that he is a qualified elector in such precinct and shall answer under oath any questions touching his qualifications as an elector and give under oath the information required to be contained in a registration certificate. Except in the case of a qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, in which case it shall be the mandatory duty of the precinct registrar to register such voter and deliver to such voter a registration certificate and the failure to so register such elector and to issue such certificate shall not preclude or prevent such elector from voting at any election in this State. If any person shall fail or refuse to give the information required in a registration certificate, or fail or refuse to answer any questions propounded to him by said registrar touching his qualifications as an elector, such person shall not be registered and no certificate of registration shall be issued to him. If said registrar shall be satisfied that any person who makes application to register is a qualified elector in the precinct

at such time, and if such person complies with all of the provisions of this act, then said registrar shall detach the original registration certificate properly filled in and containing the information required in this act, and deliver to such person such original registration certificate. The precinct registrar shall retain in his possession all duplicate registration certificates and from such duplicate registration certificates shall make up a precinct registration book; such precinct registration book shall be substantially bound and shall be in the form and contain the information hereinafter provided. Such books shall be furnished by the county registrar in each county for each election precinct. On the back of each of such books shall be written or printed the words: 'Precinct Register, Precinct No. —, — County'."

This section further prescribes that each precinct registrar shall within ten days after the 20th day of June, 1916, and within ten days after any other registration deliver to the secretary of the county election board the duplicate registration certificates. The precinct registrar shall write his name at the time of delivery in ink upon each of said duplicate registration certificates immediately underneath the perforated edge of the stub from which the original registration certificate has been detached, and the secretary of the county election board is at the same time to place other marks of identification of said duplicate certificates. From these data the secretary of the county election board is required to make up a county registration book as a permanent record of the electors showing in alphabetical order and by precinct the name of each elector registered and the date of his registration, his age, residence, occupation, race, politics, and the number of his registration certificate as shown by the duplicate registration certificate of each precinct, and when he has completed the book file it with the county clerk of the county, that the book shall be a public record and the county clerk the custodian thereof.

Section 5658 provides for the issuance of a new certificate where one already registered changes his residence to some other precinct or changes his politics.

[fol. 98] Section 5659 provides in part:

"Any person who may become a qualified elector in any precinct in this State after the tenth day of May, 1916, or after the closing of any other registration period, may register as an elector by making application to the registrar of

the precinct in which he is a qualified voter, not more than twenty nor less than ten days before the day of holding any election and upon complying with all the terms and provisions of this Act, and it shall be the duty of precinct registrars to register such qualified electors in their precinct under the terms and provisions of this Act, beginning twenty days before the date of holding any election and continuing for a period of ten days. Precinct registrars shall have no authority to register electors at any other time except as provided in this Act and no registration certificate issued by any precinct registrar at any other time except as herein provided shall be valid. After the close of registration ten days before any election as herein provided, and after the close of the registration of electors on June 30, 1916, or after the close of any other supplemental registration, the precinct registrar shall, immediately after the closing of such registration, enter upon the precinct register the names of all persons registered during such period hereinbefore provided, and shall deliver to the Secretary of the county election board the duplicate registration certificates so issued in the same manner as hereinbefore provided, and the secretary of the county election board shall receive such certificates, receipt for the same, and add the names of such electors in the county registration book in the same manner as hereinbefore provided. The permanent record of registrations made by the Secretary of the county election board and filed with the county clerk shall be certified by the secretary of the county election board to be true and correct and when filed in the office of the county clerk shall be open to inspection by any person, and copies may be made of such record during the office hours of the county clerk, but in no case shall such permanent records be taken from the possession of said county clerk."

Section 5659 provides for registration of newly qualified electors after the tenth day of May, 1916, or after the closing of any other registration period.

[fol. 99] Section 5661 provides a procedure for striking from the registration books the name or names of anyone illegally registered.

Appellant set forth in his complaint said sections 5654 and 5657 of the registration act and then alleged:

"Further plaintiff alleges, upon information and belief, that the above mentioned sections are mere subterfuges

aimed exclusively and directly at and against Negro citizens of the United States residing in the State of Oklahoma, and further that said laws are and were designed for the exclusive purpose of depriving said Negro citizens of the right of suffrage, and in violation of Section 6, Article 1 of the Constitution of Oklahoma and also in violation of the 15th Amendment of the Constitution of the United States, and in violation of the laws of the United States enacted pursuant thereto. Said statutes and laws are further an illegal and cunning attempt to achieve the illegal purpose sought by "(The Amendment) Section 4a, Grandfather Clause of Article iii of the Constitution of Oklahoma, and to evade the effect of the decision of the Supreme Court of the United States, "(Guinn vs. United States," decided June 21st, 1915, 238 U. S. 347, 59 L. Ed. 1340). That said State Statutes designated for the purpose aforesaid were enacted on February 26, 1916, immediately after the above mentioned decision of the Supreme Court of the United States; and said laws provide for an unjust, unreasonable and illegal classification of the electors of the United States and of the State of Oklahoma; they give to precinct registrars therein provided for an arbitrary and capricious discretion to deny or refuse qualified Negro electors the right of suffrage; and said State laws deny and abridge the right of Negro citizens, including this plaintiff, to vote, solely on account of race, color and previous condition of servitude. That precinct registrars of Oklahoma in general in denying the right to register and the right of suffrage throughout said State of Oklahoma, and the defendants hereinabove named in denying and refusing to permit this plaintiff to register or vote, as hereinabove specified, were and are carrying out the patent and expressed intent and design of said State laws."

Preceding the copying in the complaint of the two sections of the statute (5654 and 5657) it was alleged at length that [fol. 100] a conspiracy was formed between county and precinct registrars and the county election boards to prevent by various devices and schemes the registration of negro voters solely on account of their race, color and previous condition of servitude; that the conspiracy was set in operation during the registration period in 1916 and has continued ever thereafter and still continues to operate, and thus negro residents of Wagoner County have been deprived

of the right of suffrage solely on account of their race, color and previous condition of servitude. The details of such conspiracy, particularly in the precinct in which appellant resides, are stated, such as the statement attributed to Marion Parks, registrar, on October 24, 1934, that he had been forbidden by the higherups to register any negroes, all of which was denied by answers and on the witness stand by appellees. Appellant also claimed that a man named Workman was precinct registrar in 1916 to whom he applied for registration and was not registered. It seems to be conclusively established by proof that Workman was not precinct registrar in 1916; that James L. Pace was registrar; and Pace and others so testified. Several registration certificates issued by Pace as registrar for that year were put in evidence. Workman seems to have been registrar in 1920.

Certainly there is nothing on the face of the registration statute that even tends to support appellant's claim of discrimination between white and negro electors, nor was there proof of the conspiracy charged. There was proof that but few negroes were registered in proportion to their population, but no proof of the number of qualified electors who applied and were refused. That was not within the compass of appellant's case. He seeks to have the entire statute avoided. Nor would it have supported his right to recovery. Appellant in his brief (p. 37) says this:

"The heart and essence of said registration laws, so far as the present question of constitutionality is concerned, is embodied in Sec. 5654, Oklahoma Statutes 1931, set forth in full in this brief, and this entire controversy centers around the question whether said Sec. 5654 is unconstitutional, as violating the 14th and 15th Amendments to the Constitution of the United States, . . ."

In *Pope v. Williams*, 193 U. S. 621, the court said:

"In other words, the privilege to vote in a State is [fol. 101] within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution."

Under section 5654 all who voted at the election in 1914 were placed on the registration books and certificates were

issued to them by the registrars without applications therefor. It may be, and we take it as true, that inasmuch as the so-called grandfather clause in the Constitution of Oklahoma had not been declared void as violative of the Fifteenth Amendment until 1915 no negroes voted at the 1914 election, but at least many of them became qualified electors prior to the registration period in 1916, and Section 5652 gave notice that no elector would be permitted to vote at any election unless he should register as provided by the act. There were probably also some whites who were qualified to vote at the 1914 election who did not vote. They were on the same footing as to registration as were the qualified negroes. There was no distinction between them. Any elector, white or negro, who applied and was denied registration, had the same right to carry the issue thus made to the Supreme Court for determination. That seems to have been the situation in *Trudeau v. Barnes*, 65 F. (2d) 563, in which denial of relief such as sought here was adjudged against the plaintiff and certiorari denied. 290 U. S. 659.

After an attentive consideration of the whole act we are of the opinion that the trial court's disposition of the case should be affirmed. It is so ordered.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—September 19, 1938

This cause came on to be heard on the transcript of the record from the Eastern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed; [fol. 102] and that Jess Wilson et al., appellees, have and recover of and from I. W. Lane, appellant, their costs herein.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE PENDING APPLICATION FOR
CERTIORARI—Filed October 14, 1938

The above named appellant, I. W. Lane, appearing by Charles A. Chandler, his attorney of record herein, respect-

fully shows the court that he desires to make application to the Supreme Court of the United States for writ of certiorari to review the order, judgment and decision rendered in the above entitled cause by this Honorable Court, on or about the 19th day of September, 1938; that the time remaining, before the issuance of mandate from this court to the lower court, is insufficient within which to prepare record and transcript, and make such application to said Supreme Court. That for said reasons, it appears necessary that said appellant respectfully pray this Court to stay the issuance of Mandate herein for 60 days from this date.

Wherefore, said appellant respectfully prays the court to make and enter an order staying and withholding mandate in said cause, in order that said appellant may properly make application to said Supreme Court of the United States for such Writ of Certiorari.

Dated this 13th day of October, A. D. 1938.

Charles A. Chandler, Attorney for Appellant.

The appellees hereby acknowledge service of the foregoing Motion and receipt of copy thereof.

Dated this 13th day of October, 1938.

Joseph C. Stone, Attorney for Appellees.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATE—October 14, 1938

This cause came on to be heard on the motion of appellant for a stay of the mandate herein and was submitted to the court.

[fol. 103] On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court; the stay

hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 104] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 12, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter Charles A. Chandler. File No. 42,945. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 460. I. W. Lane, petitioner, vs. Jess Wilson, John Moss and Marion Parks. Petition for a writ of certiorari and exhibit thereto. Filed November 7, 1938. Term No. 460, O. T., 1938.

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